FROM			CITY of BALTIMORE MEMO
	NAME & TITLE	Matthew Garbark, Deputy Chief of Staff	
	AGENCY NAME & ADDRESS	Office of the Mayor City Hall, Room 250	
	SUBJECT	Resolution Relating to Non-Architectural or Engineering Professional Services	

TO Honorable President and Members of the Board of Estimates

DATE: February 20, 2019

ACTION REQUESTED OF THE BOARD OF ESTIMATES:

The Board of Estimates ("Board") is requested to adopt a Resolution Relating to Non-Architectural or Engineering Professional Services, as amended ("Resolution"). This resolution is directly related to the Regulations on Procurement, Protests, Minority and Women-owned Business Enterprise, and Debarment/Suspension ("Regulations"). The regulations incorporate this resolution by reference. The effective date of the resolution is July 1, 2019.

AMOUNT AND SOURCE OF FUNDS:

There are no direct costs associated with this action.

BACKGROUND/EXPLANATION:

On December 12, 2018, the Board authorized a 30-day public comment period for this resolution, as proposed. No public comments were received; however, internal process and timing questions were raised. Upon further consideration, the Administration is proposing revisions to the resolution to make the proposed review process more efficient while maintaining accountability. Representatives of Board members have reviewed this resolution and do not object.

As amended, this resolution would require the Comptroller's designee and the Director of Finance or the Director's designee to review all proposed professional services contracts that are subject to Board approval and either concur or not concur with it being considered a professional service. The reason the Comptroller's designee is specified and not the Comptroller is because the Comptroller is a member of the Board, as specified in the City Charter. These contracts will eventually be considered by the Board, so this provision is intended to avoid any inadvertent or unintended conflicts.

If the Comptroller's designee and/or the Director of Finance or the Director's designee does not concur, the issue shall go to the Professional Services Review Committee for determination. The Committee will be comprised of representatives of the members of the Board who are not authorized to serve on the Board as designates. Except for the Mayor who can designate any municipal officer or official to serve on her behalf, all other members of the Board have designees that are explicitly stated in the Charter. Again, as these contracts will be considered by the Board, this provision will ensure that there is no unintended or apparent conflict and it will ensure the Committee does not run afoul of requirements for open meetings.

The Committee would be authorized to establish a list of approved services that are automatically considered professional in nature.

To ensure there is adequate training on this resolution as well as on the regulations, the effective date of this resolution will be July 1, 2019.

This resolution has been reviewed by the Law Department for form and legal sufficiency.

MBE/WBE PARTICIPATION: N/A

BALTIMORE CITY RESIDENTS FIRST (BCRF): N/A

APPROVED BY THE BOARD OF ESTIMATES:

Bernice H. Taylor

Clerk

MAR 20 2019

Date

RESOLUTION

OF

THE BOARD OF ESTIMATES OF BALTIMORE CITY

RELATING TO NON ARCHITECTURAL OR ENGINEERING PROFESSIONAL SERVICES

WHEREAS, Article VI, § 11(d) of the Charter of Baltimore City, 2016 edition, as amended (herein after referred to as "Charter"), provides that "all professional services contracted for by the City shall be engaged in the manner prescribed by resolution of the Board of Estimates"; and

WHEREAS, in a Resolution adopted by the Board of Estimates on June 29, 1994, the Board of Estimates reconstituted the Architectural Commission as the Architectural and Engineering Awards Commission ("AEAC") and tasked the AEAC with considering "whether the requested A & E [architectural and engineering] services should be procured through (a) performance in-house, (b) competitive negotiations, (c) competitive pricing, or (d) design competition"; and

WHEREAS, in a Resolution adopted by the Board of Estimates on June 8, 2015, professional services contracts with expenditures greater than $25,000 must be approved by the Board of Estimates; and

WHEREAS, professional services entail a wide variety of services, the professional nature of which is determined by the manner of work performed; and

WHEREAS, besides the Resolutions adopted June 29, 1994 and June 8, 2015, the Board of Estimates has adopted no other resolution prescribing the manner in which professional services are procured; and

WHEREAS, except for architectural and engineering services, professional services contracts are generally not competitively bid;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ESTIMATES OF BALTIMORE CITY, that on this 20th day of March, 2019, the following Resolution is adopted:

I. Definitions. For the purpose of this resolution, the following terms have the meaning indicated.

A. Board. Board means the Board of Estimates.

B. Committee. Committee means the Professional Services Review Committee.

C. Emergency Procurement. An emergency procurement means a procurement in response to a dangerous condition of such a nature that public welfare would be adversely affected by awaiting the approval of the Board of Estimates.

D. Procurement.

1. Procurement means purchasing, leasing, or otherwise acquiring any supplies, materials, equipment, services, or public works including all functions that pertain to the obtaining of any supplies, materials, equipment, services, or public works, including the descriptions of requirements, selection and solicitation of sources, evaluation of responders, preparation and award of contract, claim resolution, and all phases of contract administration.

2. A grant is not a procurement.

E. Professional Services.

1. Professional services are services that are predominantly mental or intellectual, rather than physical or manual, and require the application of special knowledge, technical skill, as well as the experience that comes from instruction, training, and the exercise of mental facilities.

2. Professional services include the services of attorneys, physicians, architects, engineers, consultants, and other recognized professional individuals, associations, corporations, and groups whose services are customarily negotiated instead of competitively procured because of the individuality of those services and level of expertise involved.

II. Professional Services Review Process.

A. The Comptroller's designee and the Director of the Finance Department or the Director's designee shall review all proposed professional services contracts that are subject to Board approval and are not architectural, engineering, or legal services.

B. The Comptroller's designee and the Director of Finance or the Director's designee shall either concur or not concur in the proposed service contract being considered a professional service.

C. Should either the Comptroller's designee or the Director of Finance or the Director's designee not concur, the matter shall be submitted to the Professional Services Review Committee for consideration and determination.

III. Professional Services Review Committee.

A. Professional Services Review Committee Established. There is a Professional Services Review Committee, the purpose of which is to review and determine whether a proposed service should be procured as a professional service when:

1. The Comptroller's designee does not concur with the service being procured as a professional service;

2. The Director of Finance or the Director's designee does not concur with the service being procured as a professional service; or

3. Neither the Comptroller's designee nor the Director of Finance or the Director's designee concur with the service being procured as a professional service.

B. Committee Composition. The Committee shall consist of one representative from each of the members of the Board of Estimates whose ability to serve on the Board of Estimates is not explicitly stated in the Baltimore City Charter.

C. Committee Determination. The Committee shall determine whether the proposed service shall be procured as a professional service by majority vote.

IV. Approval List. The Committee may create a list of approved services or professions that are automatically considered professional in nature. The Committee may update the list from time to time.

V. Emergencies and Urgent Needs.

A. Emergencies. The provisions of this resolution do not apply to emergency procurements.

B. Urgent Needs. For urgently needed procurements, which may not be considered an emergency, the Committee may make determinations electronically or by telephone.

VI. Effective Date. This resolution shall take effect on July 1, 2019.

Approved as to form and legal sufficiency
this 21st day of February, 2019

Michael Schlachl
Chief Solicitor

Adopted by the Board of Estimates:

Bernice H. Taylor
Clerk

MAR 20 2019
Date

FROM			
	NAME & TITLE	Geri Byrd, Deputy Chief of Staff	CITY of BALTIMORE
	AGENCY NAME & ADDRESS	Office of the Mayor City Hall, Room 250	MEMO
	SUBJECT	Guidance on the Resolution of the Board of Estimates Relating to Non-Architectural or Engineering Professional Services Dated March 20, 2019	77-79

TO Honorable President and Members of the Board of Estimates

DATE: June 27, 2019

ACTION REQUESTED OF THE BOARD OF ESTIMATES:

The Board of Estimates ("Board") is requested to approve this guidance memorandum pertaining to implementation of the Resolution of the Board of Estimates Relating to Non-Architectural or Engineering Professional Services dated March 20, 2019 ("Resolution"). The Board is also requested to approve the initial list of de facto professional services to be automatically considered professional in nature.

AMOUNT AND SOURCE OF FUNDS:

There are no direct costs associated with this action.

BACKGROUND/EXPLANATION:

On March 20, 2019, the Board approved the Resolution which has an effective date of July 1, 2019. The Resolution details the manner in which professional services are procured that are not architectural or engineering ("A & E"). Procurement of A & E professional services is covered by another resolution.

This Resolution includes a definition of "professional services." Specifically, it states:

1. "Professional services" are services that are predominantly mental or intellectual, rather than physical or manual, and require the application of special knowledge, technical skill, and the experience that comes from instruction, training, and the exercise of mental faculties.

2. "Professional services" include services of attorneys, physicians, architects, engineers, consultants, and other recognized professional individuals, associations, corporations, and groups whose services are customarily negotiated instead of competitively procured because of the individuality of those services and level of expertise involved.

Professional services are unique among the services procured by the City. Such services are more intellectual or mental such as services for legal counsel or medical services, to name two examples. The fee for such services is generally negotiated and, therefore, does not go through a competitive bidding process. Competitively bidding such services is always encouraged, but is not required as the level of knowledge and expertise may not be reflected in a competitive price. That being said, because professional services are not required to be competitively procured, the Board passed this Resolution to provide greater accountability to ensure that such services are truly professional in nature.

EFFECTIVE JULY 1, 2019, for all non-architectural or engineering professional services contracts subject to Board approval, agencies must obtain concurrence from both the Director of Finance (or designee) and a designee from the Comptroller's Office that the service is professional in nature. If either the Comptroller's designee or the Director of Finance (or designee) does not concur, the item will be presented to a Professional Services Review Committee ("Committee"). This Committee shall be comprised of representatives of the members of the Board who are not otherwise authorized to serve on the Board as designates.[1] The Committee will decide by majority vote whether the contract should move forward as a professional service.

Functionally, there should be no major change or delay in the submission process for Board items. The agency must submit the request for concurrence that the service is professional in nature simultaneously to the Department of Finance and the Comptroller's designee no later than the Monday preceding the Board of Estimates agenda submission deadline. Concurrence from the Department of Finance and the Comptroller's designee may be in any reasonable form such as an email, memorandum, or signed statement attesting to the Director's or Comptroller's designee concurrence. A statement of such concurrence with support (i.e. memorandum, email, etc.) should be submitted with the item for placement on the Board's agenda.

It is at the discretion of the agency to determine how much information should be submitted to justify the procurement moving forward as a professional service. Some contracts may be self-explanatory while others may need additional detail. Given that many professional services will be accepted as prima facie, the Committee shall maintain and periodically update a list of services that will be considered de facto professional. This de facto list is attached for approval by the Board. For services that fall on this list, no concurrence per this guidance is required as these services would be automatically considered professional in nature. The Board memorandum need only reference the service and indicate the reference code and state what the service is.

Emergency procurements are not covered by this guidance. For urgently needed procurements, electronic or telephonic determinations by the Committee are authorized. The designee of the Mayor shall coordinate the Committee, scheduling meetings, creating agenda, and recording actions taken by the Committee.

Any decision of the Committee may be overturned or reviewed by the Board.

MBE/WBE PARTICIPATION: N/A

BALTIMORE CITY RESIDENTS FIRST (BCRF): N/A

APPROVED BY THE BOARD OF ESTIMATES:

Clerk

JUL 10 2019
Date

[1] The Comptroller, City Council President, Director of Public Works, and City Solicitor all have specific designees who may serve on the Board on their behalf. The Mayor has more latitude to choose any municipal official. The Professional Services Review Committee shall not contain anyone who is explicitly authorized to sit on the Board by his/her position.