


FROM	NAME & TITLE	Matthew Garbark, Deputy Chief of Staff <i>MMG</i>	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Office of the Mayor City Hall, Room 250		
	SUBJECT	Resolution Relating to Non-Competitive procurements		

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-Competitive procurements, 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.

There are revisions being recommended; however, they are non-substantive. First, the dates of adoption of this resolution, the regulations, and another resolution Relating to Non-Architectural or Engineering Professional Services have been updated to reflect the current date of approval. Second, to ensure there is adequate training on this resolution as well as on the regulations, the effective date of this resolution has been changed to 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

MAR 20 2019

Clerk

Date

RESOLUTION
OF
THE BOARD OF ESTIMATES OF BALTIMORE CITY
RELATING TO NON-COMPETITIVE PROCUREMENTS

WHEREAS, the City Charter requires, with certain exceptions, that all contracts involving an expenditure greater than \$50,000 be awarded by the Board of Estimates through a competitive bidding process; and

WHEREAS, Article VI, § 11(e)(i) of the Charter of Baltimore City, 2016 edition, as amended (hereinafter referred to as “Charter”), provides that:

“When any supplies, materials, equipment, services, or public works are of such a nature that no advantage will result in seeking, or it is not practicable to obtain, competitive bids, or when the need for supplies, materials, equipment, services, or public works is of an emergency nature and the using agency certifies this in writing to the Board of Estimates, with written notice to the Department of Finance, the provisions of subsection (c) of this section may be dispensed with. However, the purchase may not be made, nor may the City incur any obligation for it, until approved by the Board of Estimates after considering the recommendation of the Department of Finance. When practicable, the City’s intent to make a purchase under this exception shall be posted electronically to the public for comment prior to the approval of the purchase by the Board of Estimates.”; and

WHEREAS, Article VI, § 11(e)(ii) of the Charter further provides that:

“In the event of an emergency of such a nature that the public welfare would be adversely affected by awaiting the approval of the Board of Estimates, the Department of Finance, upon application by the head of the municipal agency involved, may proceed to obtain the supplies, materials, equipment, services, or public works required without reference to the provisions of subsection (c) of this section. A full report of any this action shall be promptly submitted to the Board of Estimates.”; and

WHEREAS, while non-competitively procured contracts are sometimes necessary to provide critical City services, they inherently limit competition; and

WHEREAS, promoting and maximizing competitive bidding generally results in better prices, a more inclusive procurement process, and a growing local economy;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ESTIMATES OF BALTIMORE CITY, that on this 20th day 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. City Agency. City agency includes all City departments, bureaus, boards, commissions, and persons not embraced in a department who exercise authority comparable to that of heads of departments or bureaus.

C. Competition. Competition means the process by which more than one source for supplies, materials, equipment, services, or public works is solicited.

D. 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.

E. Non-competitive Procurement. Non-competitive procurement means a procurement of such a nature that no advantage will result in seeking, or it is not practicable to obtain, competitive responses, or when the need for supplies, materials, equipment, services, or public works is of an emergency nature.

F. 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 description 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.

G. 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 and 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.

H. Public works.

1. Public works means construction, reconstruction, demolition, or maintenance of a physical structure that is attached to the land which is:

- a. Primarily for public use;
- b. Government owned or operated;
- c. Accessible to the general public; or
- d. Government funded, wholly or in part, with no one factor being controlling.

2. Public works include public buildings, recreation fields, docks, bridges, ditches, roads, alleys, waterworks, storm drains, sewers, conduit, street lights, and sewage disposal plants.

II. Requirements for Non-Competitive Procurements.

A. Except for emergency procurements and professional services, when a City agency recommends the Board award a non-competitive procurement, the agency shall provide the following information to the Board in writing:

- 1. An explanation as to why no advantage would result in seeking competitive responses;
- 2. An explanation as to why it is impracticable to obtain competitive responses; or
- 3. An explanation as to why the procurement is of an emergency nature.

B. For emergency procurements, see “Regulations on Procurement, Protests, Minority and Women-owned Business Enterprise, and Debarment/Suspension” adopted by the Board on March 20, 2019, as amended from time to time.

C. For Professional services, see “Resolution of the Board of Estimates of Baltimore City Relating to Non-Architectural or Engineering Professional Services” adopted by the Board on March 20, 2019, as amended from time to time.

III. Evaluation of Process.

A. No later than nine months after the effective date of this Resolution, an evaluation committee shall submit a report evaluating the process specified in this Resolution.

B. The evaluation committee shall consist of the following individuals:

1. The Mayor or the Mayor's designee;
2. The City Council President or the City Council President's designee;
3. The Comptroller or the Comptroller's designee;
4. The City Solicitor or the City Solicitor's designee;
5. The Directors or their designees from three of the following four Departments, as chosen by the Mayor:
 - a. The Department of General Services;
 - b. The Department of Public Works;
 - c. The Department of Transportation; and
 - d. The Department of Recreation and Parks.
6. The City Purchasing Agent or the City Purchasing Agent's designee; and
7. The City Auditor or the City Auditor's designee.

C. The evaluation committee shall include the following information in its report to the Board:

1. The number of non-competitive procurements submitted and considered by the Board since the effective date of this Resolution;
2. A determination as to whether the explanations from City agencies for recommending awarding non-competitive procurements are sufficient; and
3. A recommendation on possible changes to the process for awarding non-competitive procurements.

D. The evaluation committee shall submit the report to the Board only when a majority of the committee members endorse the report in writing.

E. An evaluation committee member or members who do not endorse the report shall provide an explanation in writing to the Board concurrently with the committee's report.

VII. 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 Schuch
Chief Solicitor

Adopted by the Board of Estimates:

Bernice N. Taylor
Clerk MAR 20 2019 Date

FROM	NAME & TITLE	Geri Byrd, Deputy Chief of Staff <i>JB</i>	CITY of BALTIMORE MEMO 7576	
	AGENCY NAME & ADDRESS	Office of the Mayor City Hall, Room 250		
	SUBJECT	Guidance on the Resolution of the Board of Estimates Relating to Non-Competitive Procurements Dated March 20, 2019		

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-Competitive Procurements dated March 20, 2019 ("Resolution").

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 includes definitions for both "non-competitive procurement" and "emergency procurement". Specifically, the definitions of both terms are as follows:

"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.

"Non-competitive procurement" means a procurement of such a nature that no advantage will result in seeking, or it is not practicable to obtain, competitive responses, or when the need for supplies, materials, equipment, services, or public works is of an emergency nature.

Non-competitive procurement is an official term for "sole source" or "selected source" procurements. Such procurements are often necessary to provide critical City services; however, they do inherently limit competition. The Board approved the Resolution as a way to better understand the reasoning and conditions of not competitively bidding certain contracts.

As the definition above states, there are three conditions for a non-competitive procurement. It need only meet one of the conditions. They are:

1. There will be no advantage in seeking competitive responses;
2. It would not be practicable to obtain competitive responses; or
3. The procurement is of an emergency nature (note this is not the same as an emergency procurement)

EFFECTIVE JULY 1, 2019, for all non-competitive procurements (i.e. sole or selected source procurements) that are not emergency procurements as defined above, when recommending award to the Board, agencies must include a written rationale for non-competitive procurement within the Board memorandum describing how the procurement meets one or more of the conditions for non-competitive procurements.

The rationale should be in a separate paragraph within the memorandum and be easily discernible from other text. The rationale must include the following:

1. An explanation of which of the conditions apply; and
2. Specific facts that support the conditions.

By March 1, 2020, an evaluation Committee, the membership of which is listed in the Resolution, will meet and submit a report to the Board evaluating this process.

MBE/WBE PARTICIPATION: N/A

BALTIMORE CITY RESIDENTS FIRST (BCRF): N/A

APPROVED BY THE BOARD OF ESTIMATES:


Clerk

JUL 10 2019

Date