

CODE OF BALTIMORE REGULATIONS ANNOTATED

Regulations Effective as of January 15, 2021

Title 27 BOARD OF ESTIMATES

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For Information:
Department of Legislative Reference
City Hall
100 N. Holliday Street, Suite 626
Baltimore, Maryland 21202
Tel: (410) 396-4730
<https://legislativereference.baltimorecity.gov/>

Title 27 BOARD OF ESTIMATES

SUBTITLE 01 BOARD OF ESTIMATES PROCUREMENT REGULATIONS

Subtitle 01 BOARD OF ESTIMATES PROCUREMENT REGULATIONS

Administrative History

Effective Date: July 1, 2019

BALTIMORE CITY BOARD OF ESTIMATES

REGULATIONS

ON

**Procurement, Protests, Minority and Women-owned
Business Enterprise, and Debarment/Suspension**

**Authority: Baltimore City Charter, Art. VI §§ 2, 11; Baltimore City Code, Art. 5, §§ 28-13
and 40-3**

ADOPTED BY THE BOARD MARCH 20, 2019

EFFECTIVE JULY 1, 2019

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I. Procurement Regulations

A. City Procurement System – General Overview.

1. Authority for these Regulations.

- a. The Board of Estimates of Baltimore City (the “Board”) has the authority to issue procurement regulations pursuant to the Baltimore City Charter, Art. VI §§ 2, 11.
- b. The Board may waive these regulations for any particular procurement or class of procurements.
- c. The Board’s approval of any procurement automatically waives any inconsistency with these regulations for that procurement.

2. Applicability of these Regulations.

- a. These regulations apply to all City agencies (as defined in the City Charter) and other public entities subject to the procurement laws of the City.
- b. Except as otherwise provided, these regulations apply to procurements anticipated to result in contracts exceeding \$25,000. Procuring Agencies may not divide contracts (splitting) for the purpose of avoiding the triggering limits.
- c. These regulations are not applicable to certain transactions including real estate, land purchases, land dispositions, leases, licenses, easements, employee contracts, and rights of entry.

3. Excluded Activities. Nothing in these regulations shall prevent City agencies from complying with the terms and conditions of any grant, gift, or bequest if the item is approved by the Board. All procurements shall follow these regulations, regardless of funding source, except as

specifically limited by the funding source, and approved by the Board in the acceptance of the funds.

4. Procurement Authority.

- a. The Department of Finance has the authority to procure supplies, materials, equipment, and services other than professional services, on behalf of using agencies.¹
- b. City agencies have the authority to procure professional services.²
- c. The Department of Public Works, Department of General Services, Department of Recreation & Parks, and the Department of Transportation have the authority to procure public works.³
- d. Any contract award is contingent upon the proper appropriation of funds by the City in accordance with the City Charter and Code.⁴
- e. Using Agencies should not have supplies, materials, equipment, and services, or professional services performed or delivered prior to Board approval.
- f. Execution of Contracts. Only the Mayor, the Mayor's designee, or the head of an agency may execute contracts on behalf of the City.⁵

5. Rules of Construction.

- a. For public works and design-build contracts, wherever these regulations conflict with the most current version of "The City of Baltimore, Department of Public Works, Specifications for

¹ See Baltimore City Charter Art. VII, § 17(b).

² See Baltimore City Charter Art. VI, § 11(d).

³ See Baltimore City Charter Art. VI, § 11(h)(2)(i); Art. VII, § 31; Art. VII, § 132; Art. VII, § 67(a); and Art. VII, § 116.

⁴ See Baltimore City Charter Art. VI, § 9.

⁵ See Baltimore City Charter Art. VII, § 2(b).

Material, Highways, Bridges, Utilities and Incidental Structures” and any officially issued addenda thereto (the “Green Book”) or the Board of Estimates Policy Regarding the Use of Design Build Project Delivery approved by the Board on November 2, 2011, as amended from time to time, those documents shall prevail.

- b. Where provisions of these regulations appear to conflict, the provisions of the more specific section control the provisions of the general section.
- c. Where provisions of these regulations conflict with provisions of federal or state laws and regulations, the federal or state laws and regulations shall control if required by the federal or state funding source.

6. Appendices. Some resolutions of the Board and executive orders of the Mayor are listed in Section VIII and are incorporated herein by reference. These regulations control over any conflicting resolutions / executive orders which are not listed in Section VIII, unless the Board determines otherwise.

B. Definitions.

- 1. The words defined in this section have the meanings set forth below whenever they appear in upper or lower case, unless:
 - a. The context in which they are used clearly requires a different meaning; or
 - b. A different definition is prescribed for a particular section of these regulations.
- 2. Any definition for a word in this section is to be construed in a manner that is consistent with and supplementary to any definition contained in the City Charter and Code.

3. Authorized City official: A person granted specific authority to perform procurement duties or responsibilities. See Procurement Regulations § I.B.61.
4. Bid: A binding offer to furnish supplies, materials, equipment, services, or public works in conformity with the specifications, delivery terms and conditions, and other requirements included in an invitation or request for bids.
5. Bid security: An undertaking, in a form satisfactory to the City, by which a third party agrees to be liable to pay the City a certain amount of money in the event a responder fails to sign a contract as bid. Bid security may take the form of a certified check of the responder, a bank cashier's check, a bank treasurer's check drawn on a clearing house bank, a bank letter of credit, or a bid bond, deposited with, and at the request of, the City, to guarantee that the responder will, if selected, sign the contract as bid or mutually agreed, upon presentation of that contract to the responder.
6. Bidder: A person that makes a bid in response to an IFB.
7. Board: The Baltimore City Board of Estimates, including a quorum of the Board member's representatives, as described in the Baltimore City Charter Art. VI, § 1(c), and as otherwise provided in the City Charter.
8. Change Order or Extra Work Order: A type of contract modification. A written directive by the Procuring Agency to the contractor directing a change in the scope of work and which may increase or decrease the contract time and / or the contract sum.
9. Change Order Review Committee (CORC): A committee consisting of representatives of the Department of Public Works, Department of Transportation, Department of General Services, the Law Department, and Audits that reviews all change orders for public works and all task assignments over \$100,000 before they are submitted to the Board for

approval. Task assignments will be evaluated for compliance with the Minority and Women's Business Enterprise goals or Disadvantaged Bidder Enterprise goals, as required by the specific contract.

10. City: Mayor and City Council of Baltimore, a political subdivision and municipal corporation of the State of Maryland.
11. City Agency: 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.⁶
12. Competition: The process by which more than one source for supplies, materials, equipment, services, or public works is solicited.
13. Contract: Any agreement to which the City is a party for the procurement of supplies, materials, equipment, services, or public works, including any contract modification.
14. Contract award: The Board approval of a proposed award. See Procurement Regulations § I.B.43.
15. Contract modification: Any documented alteration in the specifications, delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract.
16. Contractor: Any person (see Procurement Regulations § I.B.37) obligated by a City procurement contract to provide supplies, materials, equipment, services, or public works to the City.
17. Day: Unless otherwise specified by law or in these regulations as a business day, a day shall mean a calendar day.

⁶ See Baltimore City Charter Art. I, § 2(j).

18. Debarment: The disqualification of a person (see Procurement Regulations § I.B.37), a principal of a business entity and any other person substantially involved in that person’s contracting activities from entering into a contract with the City for a period of time determined by the Board. See Debarment / Suspension Regulations § II.
19. Emergency Procurement: Any dangerous condition of such a nature that public welfare would be adversely affected by awaiting the approval of the Board.⁷ An emergency is different from a condition of an “emergency nature,” which is an urgent situation that can wait for the approval of the Board. This applies to procurements that would otherwise require Board approval. 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, the Department of Finance, upon application by the authorized official of the Using Agency,⁸ may proceed to obtain the supplies, materials, equipment, services, or public works required without formal advertisement and the prior approval of the Board.
20. Evaluation committee: A committee of three or more individuals established by a Procuring Agency in conjunction with the Using Agency for the purpose of evaluating responses submitted by proposers in connection with an RFP.
21. Expenditure Authorization: A direct payment method as set forth in the City’s Administrative Manual AM 303-01, as amended from time to time.
22. Extra Work Order or Change Order: A type of contract modification. A written directive by the Procuring Agency to the contractor directing a change in the scope of work and which may increase or decrease the contract time and / or the contract sum.

⁷ See Baltimore City Charter Art. VI, § 11(e)(ii).

⁸ See Baltimore City Charter Art. VI, § 11(e)(ii).

23. Formal solicitation: Any solicitations in the amount of \$50,000.01 or more. This dollar threshold is subject to modification by ordinance passed by two-thirds of the City Council and are required to be advertised.⁹
24. Green Book: The most current version of “The City of Baltimore, Department of Public Works, Specifications for Material, Highways, Bridges, Utilities and Incidental Structures” and any officially issued addenda thereto.
25. Informal solicitation: Any solicitation not required to be advertised.
26. Invitation for bids (IFB): A solicitation in which competitive sealed bids are invited through a public notice procedure requiring that bids be received by a specified time, opened publicly, and are evaluated in terms of price. An IFB may be formal or informal.¹⁰
27. Liquidated damages: A sum agreed to in a contract to be paid as ascertained damages by the party who breaches the contract, and not as a penalty, where actual damages may be difficult to determine at the time of the breach.
28. Master Blanket Purchase Order (MBPO): A purchase order for an indefinite quantity contract, such as a requirements contract, or for an annually recurring firm order, such as an annual software license agreement or a lease of equipment. An MBPO is not a notice to proceed, but is the notice to the contractor and the Using Agency that an award has been made, and an upset limit has been approved by the City. Individual release requisitions and release purchase orders must be initiated by the Using Agency to issue notice to proceed to a contractor on individual tasks, for specific quantities of items, or for each discrete unit of time. An

⁹ See Baltimore City Charter Art. VI, § 11(b).

¹⁰ The terms notice of letting and IFB are interchangeable as they are essentially the same formal procurement documents with different names.

MBPO must have a specific term.

29. May: Indicates an action that is permissible.

30. Minor irregularity:

a. Except for irregularities pertaining to MBE/WBE matters, a failure to meet a requirement in a formal solicitation that is merely a matter of form (not substance) or is a defect or variation as to price, quantity, quality, or delivery that is a trivial or inconsequential provision when contrasted with the total cost or scope of the procurement. A minor irregularity does not materially change the purpose or scope of the solicitation or undermine the competitive process by giving a responder an unfair advantage over others.

b. Examples of a minor irregularities include but are not limited to:

- i. Failure of a bidder to submit a duplicate copy of a bid book;
- ii. Except for the bid affidavit, failure of a bidder to sign one or more bid documents, but only if the unsigned document(s) are accompanied by other material indicating the bidder's intention to be bound;
- iii. Failure of a bidder to sign Local Hiring or other legally required documents;
- iv. Failure of a bidder to submit a certificate of good standing so long as the bidder is in fact in good standing;
- v. Failure of a bidder to submit a certificate of insurance so long as the bidder submits the certificate within a time period as required by the Board and before contract

performance begins;

- vi. Failure of a bidder to affix a corporate seal to its bid;
 - vii. Clerical errors that can be easily corrected such as failure of the bidder to submit a price total when all line items have been submitted;
 - viii. Submission of defective bid security (e.g. photocopy of power of attorney, photocopy of bid security) so long as the bidder submits corrected bid security within one (1) business day from receipt of notification. Failure to submit any bid security or the proper form of bid security may not be cured if required by the solicitation or by law;
 - ix. Failure of bidder to include bid security in correct envelope; or
 - x. Submission of a defective bid security as a result of errors in the City's instructions.
- c. For irregularities pertaining to MBE/WBE, see Minority and Women-Owned Business Enterprise Regulations.

31. Non-competitive procurement: A procurement in which 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 responses, or when the need for supplies, materials, equipment, services, or public works is of an emergency nature.
32. Notice of intent to waive competition: The Baltimore City Charter allows the City certain exceptions to the formal advertisement and competitive bidding requirements otherwise required by the Charter. The Baltimore City Charter Art. VI § 11 (e)(i) requires that, "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.”

33. Notice to proceed: A written notice to the contractor issued by an authorized City official directing commencement of contract performance.
34. Open Market Purchase Order: A purchase order that is a one-time firm order for supplies, materials, equipment, or services, for which the City does not already have an MBPO.
35. Payment bond: A bond issued by a surety that guarantees payment to suppliers and subcontractors of a prime contractor.
36. Performance security: A bond issued by a surety that guarantees full performance of a contract by a contractor or a letter of credit that provides security in a specified dollar amount.
37. Person: Any individual, firm, partnership, corporation, company, association, or body politic except the City; and includes any personal representative, agent, trustee, receiver, assignee, or other similar representative thereof.¹¹
38. Pre-qualification: A process by which the Board approves construction-related contractors and consultants recommended by the Office of Boards and Commissions (“OBC”) as eligible to respond upon a specific category or categories of work in a solicitation for a specific value threshold, if the contractor meets certain experience, financial, and other requirements of the City. Pre-qualification does not replace a determination of responsibility.¹² See rules governing operation of OBC.
39. Procurement: Purchasing, leasing, or otherwise acquiring any supplies, materials, equipment, services, or public works including all functions that

¹¹ See Baltimore City Charter Art. I, § 2(d).

¹² See Baltimore City Charter Art. VI, § 11(g).

pertain to the obtaining of any supplies, materials, equipment, services, or public works, including description of requirements, selection and solicitation of sources, evaluation of responders, preparation and award of contract, claim resolution and all phases of contract administration. A grant is not a procurement.

40. Procuring Agency:

a. A City entity authorized to procure to the extent of its procurement authority. See Procurement Regulations § I.A.4.

b. Procuring agency means “contracting agency” as defined in § III.A.5.

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

42. Proposal: An offer submitted in response to a request for proposals (“RFP”). See Procurement Regulations § I.B.51.

43. Proposed award: A recommendation of the Procuring Agency to the Board that a specific responder is the successful responder after the evaluation of responses and the completion of any negotiations, if appropriate. This recommendation shall be made in accordance with these regulations and initiates the process by which a contract award may be made by the Board to the responder. May also refer to the recommendation of an evaluation committee to the Procuring Agency.

44. Proposer: A person that submits a proposal. See Procurement Regulations § I.B.42.
45. Protest: A challenge to the award of a bid to a particular bidder. All protests must be written and sent to the Board pursuant to the Bid Protest Regulations dated January 22, 2014. The protest must state: (1) whom the speaker represents and the entity that authorized the representation; (2) what the issues are and the facts supporting the position; and (3) how the protestant will be harmed by the proposed Board action.
46. Public notice: The means reasonably calculated to notify the public, such as inclusion on a Board meeting agenda, an advertisement, mailings, placing notices in newsletters, and inclusion of public notice on the CitiBuy system or other electronic media.
47. Public works: A construction, reconstruction, demolition or maintenance of a physical structure that is attached to the land (e.g., a public building, recreation field, dock, bridge, ditch, road, alley, waterworks, storm drain, sewer, conduit, street light, and sewage disposal plant) which is: (1) primarily for public use; (2) government owned or operated; (3) accessible to the general public; and / or (4) government funded, wholly or in part, with no one factor being controlling.
48. Purchase Order: The electronic file residing in CitiBuy, the City's electronic procurement database located at www.baltimorecitibuy.org, notice of which is emailed to the contractor after the City's approval of the award. If an Open Market Purchase Order is issued to the contractor, this is the contractor's notice to proceed. If an MBPO is issued to the contractor, this is notice that the City will commence placing orders, by issuing individual Release Purchase Orders. See Procurement Regulations § I.B.21.
49. Release Purchase Order: The electronic file residing in CitiBuy, notice of

which is emailed to the contractor, which is the contractor's notice to proceed on an MBPO.

50. Request for information (RFI): A request for market information; it is not a solicitation unless the document provides otherwise.
51. Request for proposals (RFP): A solicitation to prospective proposers for providing supplies, materials, equipment, services, or public works in which the method of award is based on price and technical or other scoring.
52. Responder: Any person who submits a response to a City IFB, RFP, informal solicitation, or any other method the City uses to find sources to provide supplies, materials, equipment, services, or public works. See also definitions for Proposer and Bidder.
53. Response: A responder's submission in conjunction with any type of City solicitation for supplies, materials, equipment, services, or public works.
54. Responsibility: A determination, based on characteristics of a responder, that demonstrates that the responder is capable of satisfying the City's needs and requirements for a specific contract, and includes a good faith determination of fitness, capacity, integrity, and other considerations affecting work performance and financial responsibility, as well as previous compliance with contract terms, including but not limited to subcontractor utilization required by the contract.
55. Responsible bidder / proposer / responder: A person capable of satisfying the City's needs and requirements for a specific contract. See Procurement Regulations § I.B.54.
56. Responsive bidder / proposer / responder: A person who has submitted a response that conforms in all material respects to the requirements of an IFB, RFP, or informal solicitation. See Procurement Regulations § I.B.57.

57. Responsiveness: A determination that a response complies with the material requirements of an IFB, RFP, or informal solicitation.
58. Selected source procurement: When supplies, materials, equipment, services other than professional services or public works are available from more than one source but the Using Agency requests a specific contractor.
59. Shall: Indicates a requirement.
60. Sole source procurement: When supplies, materials, equipment, services other than professional services or public works are only available from one source.
61. Solicitation: A request by an authorized City official for responses through a formal communication, with potential responders in accordance with these regulations. This is intended to include informal solicitations, except where otherwise addressed in these regulations or otherwise intended by the Charter.
62. Using Agency: The agency that requests supplies, materials, equipment, services, or public works through a Procuring Agency.

C. Ethics and Standards of Behavior.

1. Nondisclosure before Solicitation. Until the City publicly issues a solicitation, a person involved in a solicitation shall not release information concerning the solicitation to any person who is not a City employee, consultant, or the Using Agency or Procuring Agency preparing the solicitation. A person working on a solicitation, however, may obtain information from others for the purpose of aiding in drafting the contents of the solicitation.
2. Nondisclosure after Receipt of responses. Until the recommendation for award is made to the Board, a person involved in review of responses to a

solicitation issued on behalf of the City, or who has been informed of the status or content of the review in the course of their duties, shall not release information concerning the solicitation or responses to any person not involved in the review of responses. This does not prohibit the Procuring Agency from making disclosures for briefing of a Board member.

3. Ethics Code. All City employees in the procurement process are subject to the City Ethics Code and the applicable regulations for standards of conduct required in contracting. Questions regarding ethical issues should be directed to the Executive Director of the City Ethics Board.

D. Release of Information. Solicitations, responses, and evaluations are subject to the Maryland Public Information Act (“MPIA”). Generally, responses to solicitations are available for public inspection at the Board, located in Room 204 of City Hall, after the bid has been opened by the Board. If a responder believes its response includes confidential commercial information not disclosable under the MPIA, it must clearly designate that information when it is submitted it to the City.

E. Contractor Pre-Qualification.¹³

1. Pre-qualification of public works contractors. OBC, under the oversight of the Office of Boards and Commissions Review Committee, is charged by the Board with responsibility in regard to all public works-related matters relating to prequalification, requalification, and disqualification of contractors and consultants and to the performance evaluation of consultants and contractors. See rules governing operation of OBC.
2. Otherwise, a Procuring Agency in a formal solicitation may determine the requirements, if any, for the pre-qualification of responders.

¹³ See Baltimore City Charter Art. VI, § 11(g).

F. Minority and Women’s Business Enterprises. Art. 5, Subtitle 28 of the Baltimore City Code contains the requirements for Minority and Women’s Business Enterprises. It mandates that the Minority and Women’s Business Opportunity Office (“MWBOO”) is responsible for the certification of Minority and Women’s Business Enterprises and maintaining a directory of these certified business enterprises. MWBOO is also responsible for investigating alleged violations of Art. 5, Subtitle 28; certifying compliance with Art. 5, Subtitle 28 before contracts are submitted to the BOE for award; setting MBE and WBE participation goals on each contract over \$50,000; and establishing annual goals for MBE and WBE participation in the procurement process. See Minority and Women-Owned Business Enterprise Regulations.

G. Formal Solicitation.

1. Public Notice. Public notice for procurements anticipated to result in a contract (excluding contracts for professional services) exceeding \$50,000 or such other number as established by the City Council, shall be published at least twice in a newspaper of general circulation published in Baltimore City and also published electronically at a site available to the public.¹⁴ Publication shall be not less than 10 days and no more than 90 days before the date set for opening responses.¹⁵
2. Use of a Formal Solicitation. A formal solicitation must be used for any procurement expected to result in a contract valued at more than \$50,000 unless the procurement meets the requirements for another type of solicitation defined in these regulations.
3. Formal Solicitation Copy Fees. The applicable copy fee shall accompany each request for a new solicitation. A responder may view a solicitation

¹⁴ A solicitation for supplies, materials, equipment and services is published electronically in CitiBuy. A solicitation for public works is published electronically by the listing of a notice of letting in the agenda of the Board of Estimates.

¹⁵ See Baltimore City Charter Art. VI, § 11(c).

but cannot submit a copy stamped “Not for Bidding Purposes” for consideration. See Procurement Regulations § F.14.

4. Formal Solicitations – IFBs, Competitive Sealed Bids.

- a. General. An IFB is a formal solicitation by which competitive sealed bids are invited through a public notice procedure that results in an award to the lowest responsive and responsible bidder.¹⁶
 - i. Any prospective bidder who requests a change in or is uncertain as to the true meaning of the specifications or other contract documents or any part thereof, shall submit to the person indicated in the solicitation a written request for the change or interpretation. The request, with supporting documents, drawings, etc. shall be received by the Procuring Agency on or before five business days prior to the day on which the bid is due, or longer as specified by the document.
 - ii. Any substantive change or interpretation of the contract documents or specifications in the solicitation, if made, will be made only by addendum duly issued. A copy of such addendum will be furnished or made available to each known person receiving the solicitation. Any explanations, changes, or interpretations to the proposed documents in the solicitation made or given prior to the award of the contract shall not be binding on the City, unless contained in an addendum.
 - iii. The omission by the City of any specifications or details of

¹⁶ See Baltimore City Charter Art. VI, § 11(h).

any specification in the solicitation which would normally apply to the supplies, materials, equipment, services, or public works specified therein, but which are nevertheless, necessary for the proper carrying out of the intent of the specifications, shall not relieve the bidder from fulfilling those required specifications needed to provide supplies, materials, equipment, services, or public works best suited to the intended purpose of the solicitation as determined by the Procuring Agency.

b. Procedure.

- i. IFBs are issued and public notice given by the Procuring Agency.
- ii. Bids are irrevocable once filed.¹⁷
- iii. Bids shall be submitted in the form and manner indicated by the solicitation document and solicitation forms. Any bid that does not fully respond to and comply with all the detailed specifications or other requests for information including execution of bid forms may be declared “non-responsive” by the City and recommended for rejection. The City shall not be responsible for any errors or omissions of the bidder.
- iv. Bidders shall submit bids by 11:00 a.m. on the date indicated in the document to the Board, located in Room 204 of City Hall, or at any other time or location determined by the Board.¹⁸

¹⁷ See Baltimore City Charter Art. VI, § 11(h)(1)(iv).

¹⁸ At 10:45 a.m. on Wednesdays, staff of the Board are located at the front of City Hall to accept bids.

- v. The Board shall time-stamp each bid when received in Room 204. Bids received after 11:00 a.m. shall not be accepted.
- vi. The Board publicly opens bids at 12 noon on Wednesdays. The Board: (1) publicly opens all timely bids received at that time; (2) at the Board's option, reads the bids aloud to the persons present; and (3) leaves a copy of the IFB and the bids in the Office of the Board for review by interested persons for a reasonable period of time or makes arrangements for the furnishing of copies of these documents to interested persons, as further described in § 4 of the Procurement Regulations. In the event of unusual circumstances, the Board will determine the opening date, time, and location.
- vii. No statement or comment made while opening the bids is binding on the City or has any effect with respect to interpretation of the solicitation documents or bids received. Opening bids is a ministerial function as part of a public process.
- viii. The Board shall forward all bids received to the Procuring Agency for evaluation, unless the Board refers the bid to the Law Department for review.
- ix. The Procuring Agency shall evaluate the bids in accordance with the method of award criteria and for responsiveness and responsibility, and forward recommendations to the Board. Only award criteria set forth in the IFB shall be considered for the bid evaluation.
- x. In the case of tie bids, the Using Agency, with written

notice to the Department of Finance, shall make a written recommendation and report to the Board setting forth all pertinent considerations and reasons for its recommendation.¹⁹ The Board, after considering the recommendation of the Department of Finance, may then award the contract in its discretion, as long as the total cost to the City does not exceed the amount of the tie bid.

- xi. If all bids are found to be noncompliant with MBE/WBE goals by the Minority and Women's Business Opportunity Office (MWBOO), the Procuring Agency may inform all bidders of their noncompliance and allow them up to ten days to come into compliance. No award may be recommended to the Board unless the recommended awardee is compliant with the MBE/WBE goals.
- xii. The Board shall post the name of the proposed contract awardee or the proposed rejection of all bids on the Board's agenda.
- xiii. The Board shall award the contract as an entirety to the lowest responsive and responsible bidder, or by items to the respective lowest responsive and responsible bidders, or reject all bids.²⁰ The decision to reject all bids is final and not subject to protest.
- xiv. When alternative bids are invited for two or more different things, after all bids are opened, the Using Agency recommends to the Board selection of the particular items that will be procured and shall recommend award of the

¹⁹ See Baltimore City Charter Art. VI, § 11(h)(1)(iii).

²⁰ See Baltimore City Charter Art. VI, § 11(h)(1)(ii).

contract to the lowest responsive and responsible bidder for that particular item in accordance with the solicitation document.²¹

5. Formal Solicitations – RFPs, Competitive Sealed Proposals.

- a. General. An RFP is a formal solicitation for competitive sealed proposals. Proposals are publicly opened. Final costs and scope of work may be subject to negotiation after the proposals are received and before the contract is awarded if stated in the RFP. An RFP results in an award to the highest scoring responsive and responsible proposer.
- b. Proposal Receipt.
 - i. RFPs are issued and public notice given by the Procuring Agency.
 - ii. Technical responses to RFPs are publicly opened by the Board and forwarded to the Procuring Agency for review, consideration, and scoring. At the request of the Procuring Agency, price proposals are publicly opened by the Board and forwarded to the Procuring Agency.
 - aa. Once filed, a proposal is irrevocable.
 - bb. Until a proposed award for an RFP is posted, all technical responses to RFPs shall not be released to the public, except as required by § D of the Procurement Regulations.
 - iii. The Procuring Agency submits its recommendation for award or rejection of all proposals to the Board.

²¹ See Baltimore City Charter Art. VI, § 11(h)(1)(ii).

- iv. In the case of a tie in the final score, the Procuring Agency, with written notice to the Department of Finance, shall make a recommendation and report to the Board setting forth all pertinent considerations and the reasons for its recommendation. The Board, after also considering the recommendation of the Department of Finance, may then award the contract in its discretion, as long as the total cost to the City does not exceed the amount of the tie proposal.
- v. The Board shall post the name of the proposed contract awardee or the proposed rejection of all proposals on the Board's agenda.
- vi. The Board shall award the contract as an entirety to the highest scoring responsive and responsible proposer or reject all proposals. The decision to reject all proposals is final.
- vii. The Procuring Agency may negotiate a contract with the proposed awardee if negotiation is provided for in the solicitation.

6. Proposal Evaluation.

- a. All evaluations of proposals shall be done by an evaluation committee. The Procuring Agency shall select the evaluation committee members with input from the Using Agency, subject to these regulations.
- b. Each evaluation committee shall be made of at least three individuals.
- c. No more than 50% of each committee shall be employees or consultants of the Using Agency. This restriction may be modified

or waived by the Procuring Agency upon written request of the Using Agency, which shall be the basis for modification or waiver.

- d. Conflicts. No committee members shall have a conflict of interest relating to the evaluation of proposals submitted in response to the RFP.
- e. Disclosure. No procurement officer or committee member shall disclose any information relating to the evaluation of proposals submitted in response to the RFP, including but not limited to the identity of committee members, the status of the evaluation, the contents of the proposals or the scores. This does not prohibit the Procuring Agency from making disclosures for briefing of a Board member.
- f. Individual committee member scores shall be kept confidential, unless the Law Department determines that the scores may be released.
- g. If all proposals are found to be noncompliant with MBE/WBE goals by the Minority and Women's Business Opportunity Office (MWBOO), the Procuring Agency may inform all proposers of their noncompliance and allow them up to ten days to come into compliance. No award may be recommended to the Board unless the recommended awardee is compliant with the MBE/WBE goals.

7. Formal Solicitation Cancellation / Rejection of all Bids.

- a. Cancellation Before Time for Opening. Subject to Board approval, the Procuring Agency may cancel a formal solicitation in whole or in part before the opening or due date when it decides that this action is in the best interest of the City.
- b. Notice of Cancellation of Formal Solicitation. The Procuring

Agency shall communicate cancellation of a solicitation in advance of the recommendation to the Board. Responders are not entitled to any compensation in connection with cancellation of a solicitation.

- c. Rejection of all Bids after Time for Opening. The Procuring Agency may recommend to the Board that it reject all responses to a formal solicitation when it decides that this action is in the best interest of the City.

8. Responsiveness and Responsibility.

a. Responsiveness.

- i. The Procuring Agency shall recommend to the Board whether a responder is responsive; the Board shall make the final determination. See Procurement Regulations § I.B.57.
- ii. In determining responsiveness, the Procuring Agency shall consider, among other factors, the responder's conformance with the terms and specifications of the solicitation, such as:
 - aa. Each of the solicitation forms required by the solicitation should be fully and accurately completed.
 - bb. All required information should be included.
 - cc. All signatures should be by hand and not an imprint or typed name.
 - dd. Any corporation or other legal entity completing solicitation forms should be executed by a person

with authority to bind the entity.

ee. All notary certificates should be fully and completely filled out and in accordance with Maryland law.

iii. The Board, in its discretion, may permit a cure to any deficiency resulting from a minor irregularity in a response or may waive the deficiency.

b. Responsibility.

i. A responder must be responsible. See Procurement Regulations § I.B.54. The Procuring Agency shall recommend to the Board whether a responder is responsible for the Board's final determination. Prior to written notice to an affected responder and / or a recommendation to the Board that a responder be found non-responsible, the Procuring Agency shall consult with the Law Department.

ii. In determining responsibility, the Procuring Agency shall consider, among other factors, the following:

aa. The ability, capacity, organization, facilities, and skill of the responder to perform the contract;

bb. The ability of the responder to perform the contract or provide the services within the time specified without delay, interruption or interference;

cc. The integrity, reputation, and experience of the responder, and its key personnel;

dd. The quality of performance of previous contracts or services for the City or other entities. Past

unsatisfactory performance may be sufficient to justify a finding of non-responsibility;

- ee. The previous and existing compliance by the responder with laws and ordinances relating to the contract or services;
 - ff. The sufficiency of financial resources of the responder to perform the contract or provide the services;
 - gg. Whether a responder is in default of payment of any money due the City;
 - hh. Debarment by the City or other entity; and
 - ii. Results of reference checks.
- iii. A responder may be required at any time by the Procuring Agency to provide additional information, references and other documentation and information that relate to the determination of responsibility. Failure to furnish requested information may constitute grounds for a finding of non-responsibility of the prospective responder. Any and all information received from references or other information about past performance may constitute grounds for a finding of non-responsibility.

9. Debriefing of Unsuccessful Responder.

- a. After contract award, unsuccessful responders may be debriefed upon request submitted to the Procuring Agency within a reasonable time. Debriefings may be provided at the earliest feasible time after contract award and shall be conducted by an authorized City official familiar with the rationale for the selection

decision and contract award. In conducting debriefings, there shall be no disclosure of any information derived from responses submitted by competing responders.

- b. Debriefing shall:
 - i. Be limited to discussion of the unsuccessful responder's response and may not include specific discussion of a competing responder's response;
 - ii. Be factual and consistent with the evaluation or the unsuccessful responder's response; and
 - iii. Provide information on areas in which the unsuccessful responder's technical response, if submitted, was deemed weak or deficient or the reasons for which a responder was found non-responsive and / or non-responsible.
- c. Debriefing will not include discussion or dissemination of the notes or rankings of individual members of an evaluation committee, but may include a summary of the authorized City official's rationale for the recommended contract award.
- d. A record of the debriefing shall be made a part of the contract file.

10. Bid Security.

- a. Bid Security Requirements.
 - i. All bid security forms should have all blanks filled in, contain the signature of the responder and the signature of the surety, and have a valid power of attorney form attached. Any deficiencies in either the bid bond or the power of attorney, if required, may be immediate grounds for response rejection.

- ii. Bid security may only be submitted from surety companies that, at the time of response submission and / or contract execution, are authorized to transact business in the State of Maryland.
- iii. If the City makes an award but, within 10 business days after award, the successful responder does not execute and return the contract, provide acceptable performance and payment bonds, certificates of insurance, minority participation documentation and other submission requirements set forth in the solicitation documents, then the City may terminate the award to the successful responder and the successful responder's bid security shall be forfeited to the City as liquidated damages, which is not intended nor should be construed as a penalty.²²
- iv. If a responder is not required to file a bid security and the responder fails to execute and perform any contract awarded to that responder, the responder shall forfeit the right to bid on any future City contract for a period of time determined by the Board, and shall be liable for any costs incurred by the City as a result of the default.²³
- v. When the successful responder executes the contract and, if required, the performance and payment bond, the City shall return to all responders the bid checks or release the bid bonds. If the City has deposited bid checks, the City shall reimburse the responders in the amounts of the bid checks.²⁴

²² See Baltimore City Charter Art. VI, § 11(h)(3)(iv).

²³ See Baltimore City Charter Art. VI, § 11(h)(5).

²⁴ See Baltimore City Charter Art. VI, § 11(h)(4).

- b. Public Works Bid Security.
 - i. All responses for construction contracts let for the Department of Public Works, the Department of General Services, the Department of Transportation, and the Department of Recreation & Parks and any other contracts for public works shall include a check or bid bond.²⁵
 - ii. If a check, the check shall be a certified check of the responder, a bank cashier's check, or a bank treasurer's check, drawn on a clearinghouse bank. The check shall be in an amount provided by the bid specifications or by an order or regulation of the Procuring Agency. In the case of bid checks of \$5,000 or less, the check may be of any type drawn on any banking institution of the United States.²⁶
 - iii. The bid bond shall be for an amount which is determined by the Green Book or solicitation.
 - iv. Failure to comply with bid security requirements shall be grounds for rejection.
- c. Bureau of Procurement Bid Security.
 - i. Subject to Board approval, the Director of Finance shall implement policies and procedures to determine whether a bid bond is required for a contract, the term and face value of the bond, and the manner in which the bond shall be provided and refunded.

11. Performance and Payment Bonds, Irrevocable Letters of Credit, and Self-Insurance Certification.

²⁵ See Baltimore City Charter Art. VI, § 11(h)(2)(i).

²⁶ See Baltimore City Charter Art. VI, § 11(h)(2)(ii).

- a. For public works contracts let by the Department of Public Works, the Department of General Services, the Department of Transportation, and the Department of Recreation & Parks, and any other contracts for public works, the responder shall execute and deliver to the City a good and sufficient performance bond, irrevocable letter of credit, or certification that the successful responder meets the requirements under the City's self-insurance program for performance coverage as well as a payment bond.
- b. Subject to Board approval, for Bureau of Procurement contracts, the Director of Finance shall implement policies and procedures to determine whether to require a performance bond for a contract, the term and face value of the bond, and the manner by which the responder shall provide the bond.²⁷
- c. Performance and Payment Bonds.
 - i. Amounts for Performance Bond, Payment Bond, Letter of Credit, and Certification. The bond, letter of credit, or certification shall be:²⁸
 - aa. in an amount equal to the full contract price; or
 - bb. for Bureau of Procurement contracts, in an amount as determined by the Director of Finance and named in the solicitation.
 - ii. Performance and Payment Bond Requirements. All bonds shall meet the following minimum requirements:
 - aa. At the time of contract execution, the surety company issuing the bond shall be qualified and

²⁷ See Baltimore City Charter Art. VI, § 11(h)(3)(ii).

²⁸ See Baltimore City Charter Art. VI, § 11(h)(3)(iii).

licensed to do business in the State of Maryland and listed as an approved surety for federally funded projects in excess of the response and / or contract amount on the U.S. Treasury's Circular 570, List of Approved Sureties (or as amended from time to time).

- bb. Any attorney-in-fact on the bond document shall be properly authorized to bind the surety in the full amount of the bond. The power of attorney submitted with the bond shall document the attorney-in-fact's authority. The power of attorney submitted with the bond shall be an original with an original signature of the surety, unless the power of attorney specifically permits copies to be effective or valid.
- cc. The obligee of the bond shall be "Mayor and City Council of Baltimore" and any additional or other obligee required by the City.
- dd. The performance bond shall contain the express stipulation on the part of the contractor that it will defend, indemnify, and save harmless the Mayor and City Council of Baltimore against any suit or suits, loss, damage, or expense, to which the Mayor and City Council of Baltimore may be subjected by reason of any default or negligence, want of skill, or care on the part of the contractor, its agents or employees, or of any subcontractor, in or about the performance and execution of the work.

- ee. The bond shall be an original with original signatures of all required signatories. All bond forms shall contain the signature of the contractor and the signature of the surety, have a valid power of attorney form attached, if required, and have all blanks filled in.
 - iii. Irrevocable Letter of Credit Requirements. To be acceptable, any irrevocable letter of credit shall be presentable to an institution located within the State of Maryland.
- 12. Authority to Require Additional Security. Nothing in these regulations shall be construed to limit the authority of the Procuring Agency to require additional security from a responder or contractor if such additional security is contained in the solicitation.
- 13. Bond Forms and Copies.
 - a. Bond Forms. All bonds shall be approved by the Law Department for form and legal sufficiency.
 - b. Copies of Bonds. Any person may obtain from the Procuring Agency a copy of a bond upon request.
- 14. Insurance.
 - a. General. A responder shall meet all the insurance coverage requirements of the City. Any insurance required by the City shall remain in force during the life of a contract with the City. The contractor shall name the Mayor and City Council of Baltimore as an additional insured on all applicable insurance policies.

- b. Types of Insurance Coverage. For contracts for supplies, materials, equipment, services, and public works, the City generally requires coverage for commercial general liability insurance, business automobile liability insurance, cyber liability insurance, and workers compensation insurance. Service contracts may also require professional liability or errors and omissions insurance. Additionally, contracts for public works generally require special hazards insurance such as railroad insurance, builder's risk insurance, or environmental liability insurance.

15. Formal Solicitation Copies.

- a. Formal Solicitation Copy Fees.
 - i. Paper Solicitations. A copy fee is required for public works plans and specifications and is disclosed in the solicitation. The Procuring Agency shall calculate a minimum copy fee or a variable copy fee based upon the costs associated with preparing and printing of public works plans and specifications for each procurement (also referred to as the specification book).
 - ii. Formal Solicitation Amendments or Addenda. No fee.
 - iii. Payment. The City shall not release a copy of the solicitation until the requestor pays all required copy fees in full.
 - iv. Refunds. Minimum and variable copy fees are not refundable under any circumstances, including cancellation of a solicitation.
 - v. Transfers. A solicitation may not be transferred to any other person for bidding purposes.

- vi. Waiver of Fees. The Procuring Agency may waive the solicitation copy fees:
 - aa. for responders who previously purchased a solicitation which is subsequently withdrawn by the City and re-advertised; or
 - bb. when in the best interest of the City.

H. Professional Services Solicitation.

- 1. For professional services, see “City of Baltimore Resolution Relating to Non-Architectural or Engineering Professional Services” approved by the Board on March 20, 2019, as amended from time to time.
- 2. For Board thresholds, see “Resolution of the Board of Estimates of Baltimore City for Setting the Board Approval Threshold Amount for Professional Services” dated June 17, 2015.
- 3. For architectural and engineering services, see “City of Baltimore Resolution Relating to Architectural & Engineering Services” approved by the Board on March 5, 1997, as amended from time to time.

I. Informal Solicitation – RFI.

- 1. The Procuring Agency may use an RFI in the planning phase to gather market research when the Procuring Agency is unable to clearly identify the availability of contractors, specifications for a project, and / or types of products or services needed for a project. After an RFI, the Procuring Agency should have a better understanding of market conditions, contractor interests, and project specifications. A respondent shall not receive a contract award as a result of the RFI. An RFI does not constitute a commitment, implied or otherwise, that the Procuring Agency will take procurement action in the future.

2. The RFI is accomplished by the following steps:
 - a. The Procuring Agency issues the RFI to the general public and / or interested persons in a reasonable manner (e.g., through publications, on the internet, by email, etc.)
 - b. Respondents send their RFI responses directly to the Procuring Agency.
 - c. The Procuring Agency evaluates the RFI responses.
 - d. Responses to an RFI will not be returned. Respondents are solely responsible for all expenses associated with responding to an RFI. The Procuring Agency will not pay for information received in response to an RFI.
3. This process may not be used alone to determine the basis for a non-competitive procurement.

J. Emergency Procurement.²⁹

1. This applies to procurements that would otherwise require Board approval. 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, the Department of Finance, upon application by the authorized official of the Using Agency,³⁰ may proceed to obtain the supplies, materials, equipment, services, or public works required without formal advertisement and the prior approval of the Board.
2. The Department of Finance or the Using Agency shall promptly submit to the Board a full report of any emergency procurement.
3. An emergency procurement may only be used when properly documented

²⁹ See Baltimore City Charter Art. VI, § 11(e).

³⁰ See Baltimore City Charter Art. VI, § 11(e)(ii).

facts exist that demonstrate that an emergency exists.

K. Non-Competitive Procurement (No Advantage, Not Practicable, or Emergency Nature).³¹

1. Procedure.

a. A non-competitive procurement without formal advertisement may occur only when:

- i. no advantage will result or it is not practicable to obtain competitive responses for supplies, materials, equipment, services other than professional services, or public works; or
- ii. the need for supplies, materials, equipment, services other than professional services, or public works is of an emergency nature.

b. Prior Approval Required.

- i. A purchase may not be made and the City may not incur any obligation to make payment until the Board, after considering the recommendation of the Department of Finance, approves the purchase.
- ii. 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 recommendation of the purchase to the Board.

c. For non-competitive procurement guidelines and procedures, see "City of Baltimore Resolution Relating to Non-Competitive

³¹ See Baltimore City Charter Art. VI, § 11(e)(i).

Procurements” approved by the Board on March 20, 2019, as amended from time to time.

L. Conflict of Interest. By executing a contract, the contractor asserts that it has not engaged in any practice or entered into any past or ongoing contract that would be considered a conflict of interest with the instant contract. The contractor agrees to refrain from entering into all such practices or contracts during the term of the instant contract (and any extensions thereto), including any agreements and / or practices that could give rise to even the appearance of a conflict of interest. Furthermore, the contractor asserts that it has fully disclosed to the City any and all practices and / or contracts of whatever nature or duration that could give rise to even the appearance of a conflict of interest with the parties or subject matter of the instant agreement and will continue to do so during the term of the contract and any extensions thereto. Additionally, the contractor warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the contractor, to solicit or secure the contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the contract. The contractor further warrants that it has not, and will not, employ or retain any company or persons who are in violation of the Baltimore City Ethics Code § 6-11, § 6-22, or § 6-38 to assist in procuring or executing the contract.

M. Contract Modification.

1. General.

a. Authorization. The contractor, Using Agency, or Procuring Agency may propose a contract modification. Only a documented modification approved and executed in the same manner as the original contract is effective (e.g. execution by the Procuring Agency, approved for form and legal sufficiency by the Law

Department, and approved by the Board if the Board approved the original contract).

- b. The Board may approve, approve with conditions, or reject any contract modification.

N. Termination.

1. Authority to Terminate. The Procuring Agency may terminate a contract contingent on the approval of the Board.
2. Termination Provisions in a Contract. The Procuring Agency shall include termination provisions approved by the Law Department in a contract.
3. Termination Methods. A contract may be terminated in four ways:
 - a. Termination for Default. A contract may be terminated for default. If the contractor materially breaches the contract, the City, at its option, may cancel in whole or in part work under the contract. If it is determined that the City improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
 - i. The Procuring Agency may provide the Law Department with documentation demonstrating a material breach of the contract by the contractor.
 - ii. If the Procuring Agency finds that the contractor is in default, the Procuring Agency may provide the contractor with a written notice to cure the default.
 - iii. The Law Department may approve the issuance of the notice to cure the default and the issuance of a termination for default.

- iv. If the contractor disputes the issuance of a termination for default, the contractor may file a timely appeal to the Board after exhausting any claim process administered by the Procuring Agency. The contractor may not file an appeal in response to a notice to cure the default.

- b. Termination for Convenience. A contract may be terminated for convenience at the option of the City if the termination is in the best interest of the City. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. However, the contractor shall not be reimbursed for any anticipatory profits that have not been earned prior to the date of termination. The contractor must not be paid any equitable compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.
 - i. The Procuring Agency may provide the Law Department with documentation demonstrating that termination of the contract for convenience is in the best interest of the City.
 - ii. The Procuring Agency may consult with the Law Department before the issuance of the notice of termination for convenience and any resulting contract modification
 - iii. If the Procuring Agency finds that the contract should be terminated for convenience, the Procuring Agency must provide the contractor with written notice that the contract will be terminated for convenience on the date specified in the notice. The notice must require that the contractor provide the Procuring Agency with documentation

indicating the amount of reasonable costs claimed by the contractor as a result of the termination for convenience.

- iv. The contractor must provide the Procuring Agency, within the time specified in the notice of termination for convenience, with documentation substantiating the amount of reasonable costs the contractor claims as a result of the termination for convenience.
 - v. If the Procuring Agency and the contractor agree on the amount of reasonable costs owed to the contractor as a result of the termination for convenience, the City and the contractor may enter into a contract modification, if necessary, setting forth the amount owed to the contractor as reasonable costs arising from the termination for convenience.
 - vi. If the contractor and the Procuring Agency cannot agree on the amount of reasonable costs owed to the contractor as a result of the termination for convenience, the contractor may file a timely appeal to the Board after exhausting any claim process administered by the Procuring Agency.
- c. Termination by Mutual Consent. In special circumstances a contract may be terminated by mutual consent of the parties.
- i. The Procuring Agency may provide the Law Department with documentation justifying termination of a contract by mutual consent.
 - ii. If the Procuring Agency finds that it is in the best interest of the City to terminate the contract by mutual consent, the Procuring Agency may enter into a termination agreement.

- iii. The Law Department may approve a termination agreement.
 - d. Termination for Lack of Funding. A contract may be terminated at the option of the City for a lack of funding or a change in funding policy. In the event of such non-appropriation of funds or change in funding policy at any time during the term of the contract as would prevent the City from making payment under the terms and conditions of the contract, the City may terminate the contract without the assessment of any charges, fees or financial penalties against the City.
 - i. The payment of invoices and any amounts due the contractor under a contract is contingent upon the proper appropriation of funds by the Baltimore City Council in accordance with the Baltimore City Charter and the Code. If the terms of the contract exceed a budget as adopted by the Baltimore City Council, then that portion of the contract which exceeds a properly adopted budget shall be contingent upon further appropriation by the City. In the event of such non-appropriation of funds or change in funding policy at any time during the term of the contract as would prevent the City from making payment under the terms and conditions of the contract, the City may terminate the contract without the assessment of any charges, fees or financial penalties against the City by providing written notice of intent to terminate to the contractor. The contractor shall not begin any additional work or services related to the contract upon receipt of notification of intent to terminate by the City.
- 4. Suspension of Work.
 - a. The Procuring Agency may order in writing the suspension, delay,

or the interruption of all or any part of the work under a contract (i.e. suspension of work) for such period of time as the Procuring Agency may determine to be appropriate for the convenience of the City.

- b. If a contractor is directed by the City to recommence work after a suspension of work, the contractor may provide the Procuring Agency with documentation indicating the amount to which the contractor claims it is due as a result of the suspension of work. If the City terminates the contractor for default after an order to suspend work, the contractor is not entitled to make a claim against the City for the suspension of work.
- c. If a contractor and the Procuring Agency cannot agree on the amount of reasonable costs incurred by the contractor arising from the suspension of work, the contractor must file a timely appeal to the Board after exhausting any claim process administered by the Procuring Agency.

II. Protest Regulations

- A. Repeal of Resolution. The Resolution on the Regulation of Board Meetings and Protests adopted by the Board January 22, 2014 is hereby repealed.

- B. Board Agenda.
 - 1. For each Board meeting, the President of the Board shall determine which items on the agenda are routine and which are non-routine.
 - 2. Routine items shall be adopted en masse by one vote.
 - 3. Non-routine items shall include, protests found to be in proper standing, and any other item so requested by any member of the Board.
 - 4. Non-routine items are considered and voted individually.

- C. Conduct during Board Meetings.
 - 1. In the interest of promoting order and efficiency of hearings, persons who are disruptive to the hearing may be required to leave the hearing room.
 - 2. The President shall have the right to recognize or request speakers to provide information as necessary or requested by the Board.
 - 3. The President shall have the right to limit all speakers to items and issues germane to the specific question(s) before the Board as well as to establish time limits for speakers.

- D. Protests.
 - 1. A person wishing to protest a proposed action of the Board or otherwise address the Board, whether individually or as a spokesperson, shall notify the Clerk of the Board, Room 204, City Hall, 100 N. Holliday Street, Baltimore, Maryland 21202 in writing no later than noon on the Tuesday preceding the Board meeting during which the item will be considered, or

by an alternative date and time specified in the agenda for the next scheduled meeting.

2. A protest shall be considered proper when the protestant is directly and specifically affected by a pending matter or decision of the Board.
 - a. Except as otherwise specified, the President of the Board shall determine whether protests are proper.
 - b. A member of the Board may ask for consideration of a determination made by the President of the Board regarding whether a protest is proper by requesting a vote by the Board. A majority vote by the Board shall ultimately decide whether a protest is proper.
 - c. The President may allow any other person to rebut a protest when the President determines it is in the best interest of the Board.
3. The written protest shall include:
 - a. The name of the person protesting or, if a spokesperson, the entity or organization protesting;
 - b. A narrative description of the issues and facts supporting the protest; and
 - c. A description as to how the protestant will be harmed by the proposed Board action.
4. If a person fails to appear before the Board to argue and defend their protest, the Board may reject the protest without discussion.
5. In the event the Board determines to have a public hearing on an item:
 - a. The President shall make a reasonable effort to accommodate any person(s) wishing to speak before the Board;

- b. A protest need not be submitted the Tuesday prior to the Board meeting during which the item is to be considered; and
- c. A person need not have proper standing.

E. Procurement Lobbyist.

- 1. A Procurement Lobbyist, as defined by the Baltimore City Ethics Code § 8-8(c) must register with the Board of Ethics as a Procurement Lobbyist in accordance with Baltimore City Ethics Code § 8-12.
- 2. If any member of the Board has sufficient information to determine that Baltimore City Ethics Code § 8-12 has not been complied with, he or she may make a complaint to the Board of Ethics.

F. Required Posting. The provisions of these Protest Regulations shall be posted in a manner and format that ensures adequate notice in the Department of Legislative Reference, as well as on the President of the Board's web site and the Secretary to the Board's web site.

III. Minority and Women-Owned Business Enterprise Regulations

A. Minority Business Enterprise and Women-Owned Business Enterprise Program.

1. Purpose. The purpose of these regulations is to carry out the City of Baltimore’s policy of promoting equal business opportunities in its contracting process by supporting full and equitable participation of firms owned and controlled by minorities and women in the provision of goods and services to the City.
2. Program Authority. The authority to issue these regulations is found in Article 5, Subtitle 28-13(a) of the Baltimore City Code authorizing a Minority and Women’s Business Enterprise Program.
3. Applicability. These regulations shall be used by the Chief of the Minority and Women’s Business Opportunity Office (MWBOO) with regards to determining the status of a firm as a Minority Business Enterprise (“MBE”), Women’s Business Enterprise (“WBE”), or Minority/Women’s Business Enterprise (“M/WBE) and initiation of investigatory proceedings necessary to monitor such firm’s continued eligibility for MBE, WBE, or M/WBE certification. These regulations shall be used by the Chief of MWBOO to set MBE and WBE goals on a contract-by-contract basis as well as setting annual MBE and WBE goals. These regulations shall be used by the Chief of MWBOO to monitor and enforce compliance of MBE and WBE goals.
4. Policy. It is the policy of the City of Baltimore to promote equal business opportunity in the City’s contracting process by encouraging full and equitable participation by minority and women’s business enterprises in the provision of goods and services to the City on a contractual basis.
5. Definitions – A to G. These Definitions are a supplement to the Definitions included in the City of Baltimore’s Procurement Regulations (Article I of these regulations) where the following Definitions are not

included or require further clarification for the purposes of the MBE/WBE regulations.

- a. Affiliation: Concerns and entities are affiliates of each other when one controls, or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.
- b. African American: A U.S. citizen or lawfully admitted permanent resident who originates from any of the black racial groups of Africa.
- c. Annual Receipts: The total receipts of a business enterprise over its most recently completed three (3) fiscal years divided by three (3).
- d. Applicant: A business which has applied to the Minority and Women's Business Opportunity Office for certification or recertification as a bona fide Minority Business Enterprise, Women's Business Enterprise or Minority/Women's Business Enterprise (M/WBE).
- e. Certification Appeals Board: The panel of hearing officers established in Section 28-83(d) of the Ordinance. The panel operates under the name "Minority and Women's Business Enterprise Certification Appeals Board."
- f. Asian American: A U.S. Citizen or lawfully admitted permanent resident who originates from peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- g. Baltimore Market Area: Baltimore City, Baltimore County, Anne Arundel County, Howard County, Harford County, Carroll County and Queen Anne's County.

- h. Business Enterprise: A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity operated for profit through which a commercial activity is conducted that is properly licensed and otherwise authorized to do business in the State of Maryland.
- i. Certified Business Enterprise: A minority or women's business enterprise that has been certified by the Minority and Women's Business Opportunity Office as meeting the criteria for certification under Article V, Subtitle 28.
- j. Chief: The Chief of the Minority and Women's Business Opportunity Office.
- k. Commercially Useful Function:
 - i. The performance, based on all relevant facts and circumstances, by a business enterprise of real and distinct work for which the business enterprise has the skill, expertise, and actual responsibility to perform, manage, and supervise.
 - ii. The business enterprise must be responsible, with respect to material and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself.
 - iii. A business enterprise does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation.

- l. Contracting Agency:
 - i. The city agency, department, or authorized representative that issues invitations to bid or requests for proposals.
 - ii. Contracting Agency means “Procuring Agency” as defined in §I.B.
- m. Control: The minority group member owners or women owners possess and exercise the legal authority and power to manage business assets, goodwill, and daily operations of the business, and; actively and continuously exercise this managerial authority and power in determining the policies and directing the operations of the business without any formal or informal restrictions. If owners who are not minority group members or women are responsible for the operation of the business out of proportion to their ownership interest, then the business is not controlled by minority group members or women.
- n. Decertification: The specific administrative steps taken to remove certification from a business which had been previously certified by the Minority and Women’s Business Opportunity Office.
- o. Expansion of Services: Areas of work added to a certified firm’s profile. The requesting certified firm must demonstrate the in-house capabilities to perform the requested areas work being requested with its own workforce.
- p. Good Faith Efforts: The reasonable efforts taken by a bidder or contractor, as established by reasonable documentation, to achieve the required subcontracting participation of the applicable MBE or WBE goal.
- q. Graduation: The process by which a certified firm is deemed to be

no longer eligible to participate in the City MBE Program due to its three (3)-year average of gross annual revenues or annual employment total.

r. Gross Revenue: The same as Annual Receipts.

6. Definitions - H to Z.

a. Hispanic American: A U.S. Citizen or lawfully admitted permanent resident of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish or Portuguese culture or origin, regardless of race.

b. Joint Venture: An association between business enterprises that provides for the sharing of economic interest. An MBE and/or WBE firm and one or more other firms may form a joint venture to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the MBE and/or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

c. Limited Liability Company: A form of unincorporated business organization which is organized and existing under Title 4A, Corporations and Associations Article, Annotated Code of Maryland, or under the laws of any other state or the District of Columbia.

d. Limited Liability Partnership: A partnership formed and registered with the SDAT pursuant to Title 9 of the Corporations and Associations Article, Annotated Code of Maryland, or under the laws of any other state of the District of Columbia.

- e. Managerial Control: A minority or woman owner(s) has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and destiny of a business. Control may be demonstrated in many ways, including, but not limited to:
 - i. Articles of Incorporation, Corporate Bylaws, Operating Agreements, Partnership Agreements and any other formal agreements that are free of restrictive language which would prevent the minority/woman owner from making those decisions which affect the future and destiny of a business;
 - ii. The minority/woman owner shall be able to show clearly, through production of documents, the areas of the minority/woman business owner's control, such as, but not limited to:
 - aa. The authority to sign payroll checks and letters of credit;
 - bb. The authority to negotiate and sign for insurance and/or bonds;
 - cc. The authority to negotiate for banking services, such as establishing lines of credit;
 - dd. The authority to negotiate and sign for contracts; and
 - ee. The authority to hire and terminate employees; or
 - iii. Agreements for support services that do not lessen the minority/woman owner's control of the company are permitted as long as the minority/woman business owner's

authority to manage the company is not restricted or impaired.

- f. Manufacturer: A business enterprise that produces goods from raw materials or substantially alters or fabricates them before resale, and; assumes the actual and contractual responsibility for providing the materials and supplies.
- g. Mentor-Protégé Program: A support program designed to further the development of MBE's and WBE's by assisting them to move into non-traditional areas of work and strengthen their ability to compete in the marketplace outside the MBE/WBE program by receiving training and assistance from other firms.
- h. Minor Irregularity:
 - i. A failure to meet a requirement in formal solicitation that is merely a matter of form (not substance) or is a defect or variation as to price, quantity, quality, or delivery that is a trivial or inconsequential provision when contrasted with the total cost or scope of the procurement.
 - ii. A minor irregularity does not materially change the purpose or scope of the solicitation or undermine the competitive process by giving a responder an unfair advantage over others.
 - iii. For those minor irregularities not impacting MBE/WBE, see Procurement Regulations § I.B.30.
 - iv. Examples of minor irregularities include but are not limited to:
 - aa. Failure of a bidder to sign documents acknowledging agreement to comply with laws,

rules or regulations, the compliance with which is mandatory, legally required and independent of the execution of any document in bid package;

bb. Clerical errors that can be easily corrected, such as failing to mark or otherwise indicate whether a firm is an MBE or WBE when all other information is correctly provided; or

cc. When, despite a good faith effort on the part of the bidder, a designated MBE or WBE is not in good standing with the State Department of Assessments and Taxation at the time of award, but can come into good standing within ten (10) days of award.

i. Minority Business Enterprise or MBE: A for-profit business enterprise that is owned, operated, and controlled by one (1) or more minority group members who have at least 51% ownership, and is located in the Baltimore City Market Area.

j. Minority Group Member: A member of a minority group, such as African American, Hispanic American, Asian American or Native American.

k. Native American: A U. S. Citizen or lawfully admitted permanent resident who originates from any of the original peoples of North America and who maintains cultural identification through tribal affiliation or other suitable authority in the community.

l. Operating Office:

i. The business location within the Baltimore City Market Area where the individual(s) who regularly manage the firm's day-to-day operations are located, where clients are

met, and where business records are kept.

ii. It is the location where the Applicant has a tenancy interest, leasehold estate or other real property interest in the space.

iii. The following are examples of situations that do not meet the definition of an operating office:

aa. A virtual office;

bb. A home office of an Applicant's employee; or

cc. A service agreement for phone service and/or marquee privileges.

m. Operational Control:

i. The minority or woman owner must possess overall understanding of and the technical competence and experience directly related to the type of business in which the firm is engaged and the firm's operations.

ii. In order to clarify the level of operational involvement, which a minority or woman owner must have in a business for it to be considered eligible, the following examples are put forth, but are not intended to be all inclusive:

aa. If state or local laws require the persons to have a particular license or other credentials in order to own and/or control a certain type of firm, then the minority/woman that owns and controls the firm must possess the required license or credentials or

bb. If state or local law does not require such persons to have a particular license or credentials, then the

firm must have in its employ a licensed individual.

- n. Out-Of-State Firm: A firm whose principal place of business is in a state or location other than Maryland who is duly authorized to do business in Maryland.
- o. Owned: For the purposes of determining whether a business is a minority business enterprise or women's business enterprise, means that:
 - i. The minority group member or female owner, as the context requires, possesses an ownership interest in at least 51% of the business;
 - ii. This ownership is real and continuing and goes beyond the mere indicia of ownership reflected in the ownership documents; and
 - iii. The minority group member or woman owner enjoys the customary incidents of ownership and shares in the risk and profits commensurate with his or her ownership interests, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.
- p. Recertification:
 - i. To renew the MBE, WBE, or M/WBE certification of a business enterprise that was previously issued by the Minority and Women's Business Opportunity Office.
 - ii. Recertification is required every two (2) years.
- q. Size Eligibility Standards:
 - i. The standards for size eligibility for a business concern to

be certified as an MBE or WBE.

- ii. MWBOO and the Board of Estimates may establish maximum size standards.
- iii. Size determinations are based on a three (3) year average of annual gross receipts or number of employees including affiliates.
- r. Sole Proprietorship: A business enterprise that is 100% owned, operated, and controlled by one (1) individual.
- s. Subcontractor: A business enterprise that has a direct contract with a prime contractor to perform part of the work on a contract.
- t. Supplier: A business enterprise that:
 - i. Furnishes needed items to a contractor and
 - ii. Either:
 - aa. Is involved in the manufacture or distribution of the supplies or materials or
 - bb. Otherwise warehouses and ships the supplies.
- u. Women's Business Enterprise "WBE": A business enterprise:
 - i. That is owned, operated, and controlled by one (1) or more women who have 51% ownership;
 - ii. In which women have day-to-day operational and managerial control, interest in capital, and risk and earnings commensurate with their percentage of ownership; and
 - iii. That is located in the Baltimore City Market Area.

B. Certification Eligibility.

1. Compliance with Regulations.

- a. The firm seeking certification has the burden of demonstrating to the MWBOO that it meets the requirements of these regulations concerning minority status or gender, ownership, control, and business size.
- b. False, misleading statements, material omissions by an Applicant, or involvement in contracting or certification-related irregularities with any entity, as well as non-compliance with reasonable requests of MWBOO for information concerning eligibility shall be considered in determining whether to certify, re-certify or de-certify a firm.
- c. MWBOO will certify or re-certify only those firms which meet all the requirements of § III.B of these regulations.

2. Business Purpose. An applicant for certification must be an on-going business enterprise that has been in continuous operation for at least twelve (12) months.

3. Membership. Owners must be a member of one of the following minority groups, and/or a woman: African American, Asian American, Hispanic American, or Native American.

4. In Good Standing. An applicant for certification must be in Good Standing with the Maryland Department of Assessment and Taxation at the time of submission and review.

5. Ownership.

- a. The Applicant must establish that either collectively or individually the minority and/or woman owner(s):

- i. If a corporation, own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding;
 - ii. If a partnership, own at least 51% of each class of partnership interest;
 - iii. If a limited liability company, own at least 51% of each of membership interest;
 - iv. Has real, substantial, and continuing ownership and goes well beyond pro forma ownership of the firm as reflected in the ownership documents;
 - v. Enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests; and
 - vi. Directly hold all securities that constitute ownership of a firm and when the beneficial owner of securities or assets held in trust is a minority or woman, the securities or assets may be regarded as held directly if:
 - aa. The trustee is a minority or woman or
 - bb. The beneficial owner exercises effective control over the management, policy making, and daily operations of the firm;
- b. The contribution of capital or expertise by the minority or woman owners(s) to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the business or its owners who are not minorities or women, or the mere participation in the firm's activities as an employee.

- c. The following requirements apply to situations in which expertise is relied upon the minority or woman owner(s) to acquire ownership. The owner's expertise must be:
 - i. In a specialized field;
 - ii. Of outstanding quality;
 - iii. In areas critical to the firm's operations;
 - iv. Indispensable to the firm's potential success;
 - v. Specific to the type of work the firm performs; and
 - vi. Clearly documented in the records of the firm.

- d. A business enterprise is not owned by a minority or woman if all of the interests in a business or other assets obtained by the individual were the result of a gift from an individual who is:
 - i. Substantially involved in the Applicant firm, or an affiliate of that firm;
 - ii. Substantially involved in the same or a similar line of business; or
 - iii. Engaged in an ongoing business relationship with the Applicant firm, or an affiliate of that firm.

- e. To overcome this presumption and permit the gifted interests or assets to be counted, the minority or woman owner must provide evidence that is satisfactory to MWBOO that demonstrates:
 - i. The gift or transfer to the minority or woman was made for reasons other than obtaining certification and
 - ii. The minority or woman owner(s) actually controls the

management, policy, and operations of the firm, notwithstanding the continuing participation of the individual who provided the gift or transfer.

C. Certification Process and Procedures.

1. Certification.

- a. Certification is the foundation of the MBE/WBE Program. MWBOO attempts to ensure that a company has met the burden of demonstrating it is a bona fide MBE or WBE by requiring evidence satisfactory to MWBOO that it meets the requirements of these regulations concerning group membership, ownership, control, and business size.
- b. Certification shall be limited to the area(s) of services or specialty for which the firm has the in-house capacity to provide at the time of application.
- c. MBE, WBE, and M/WBE certification with the City shall be valid for two (2) years.
- d. Until certified, an Applicant shall not be counted toward achievement of MBE/WBE goals on City contracts.
- e. The absence of certification does not affect any applicant's right to bid or submit a proposal for any City contract.
- f. The City's MBE/WBE Directory must be in electronic format and include the appropriate NAICS codes describing the products or services for which a MBE or WBE was certified. The MBE/WBE Directory shall be maintained on the Internet and updated in real time. The MBE/WBE Directory shall be published annually in print form. One copy shall be placed with the Department of Legislative Reference.

2. Application Procedure.

- a. Applications for City of Baltimore MBE/WBE certification will be received and reviewed by MWBOO.
- b. The steps described below outline the certification process for all Applicants seeking certification from MWBOO. In order to be considered for certification, the Applicant must supply all of the requested documentation and information. Failure to supply all requested documentation and information is grounds for denial of certification. Further, a material misstatement of fact shall constitute grounds for a denial of certification. A business will be reviewed and analyzed as it existed on the date the Disclosure Affidavit was signed and notarized. Changes subsequent to the notarized Affidavit date will not be considered during the certification process.
- c. Applicants must complete the application provided by MWBOO, submit all the information requested therein, agree to supply any additional information requested by MWBOO and be bound by all the provisions and regulations governing the certification and recertification process as detailed by these regulations.
- d. Certification shall be limited to the area(s) of services or specialty for which the firm has the in-house capacity to provide at the time of application.
- e. Until certified, an Applicant shall not be counted toward achievement of MBE/WBE participation goals on City contracts. The absence of certification does not affect any Applicant's right to bid or submit a proposal for any City contract.
- f. Required Documents for a Corporation. Applicant must complete and have notarized a Disclosure Affidavit and submit it to

MWBOO with the documents listed below:

- i. A copy of current financial statement consisting of a balance sheet and operating statement, covering a one (1) year period, prepared on the letterhead of, and signed by an independent certified public accountant. If requested, an audited statement may not need to be prepared by a certified public accountant at the discretion MWBOO;
- ii. Copies of the firm's Federal tax returns, including all schedules, for the past three (3) years, signed;
- iii. If the business is less than two (2) years old, the personal tax returns for the principals;
- iv. Copies of all State and local licenses required to do business in Maryland, if applicable (Professional if required);
- v. If license is in the name of an individual, proof of employment by the business;
- vi. If the business has ever been bonded, a copy of the latest bond;
- vii. A copy of the firm's Articles of Incorporation.
- viii. A copy of the minutes of the first corporate organizational meeting and meetings reflecting stock transfers, stock sales, and election of officers;
- ix. A copy of the corporation's By-Laws;
- x. A copy of each stock certificate issued (not a specimen copy);

- xi. A copy of the firm's stock ledger;
- xii. Proof of stock purchase including but not limited to:
 - aa. Cancelled checks used to purchase stock,
 - bb. Bank deposit slips reflecting money paid for stock,
or
 - cc. If goods or services were exchanged for stock in lieu of cash, copies of appropriate corporate records reflecting this action;
- xiii. Stock purchase agreements or stockholder agreements;
- xiv. A list of the firm's sources of capital investment other than stock purchase including but not limited to:
 - aa. Silent, outside, or other investors and
 - bb. Personal savings, loans, etc.;
- xv. Copies of third party agreements, such as rental or management service agreements;
- xvi. A description of the major equipment owned or rented by the firm, including copies of any rental agreements or proof of ownership such as titles, invoices, etc.;
- xvii. Copies of MBE or WBE program denials from other jurisdictions;
- xviii. Descriptions of the last three (3) jobs performed, including:
 - aa. The dollar amount,
 - bb. The completion date, and

- cc. The name of the prime contractor or client;
- xix. Proof of an operating office in the Baltimore City Market Area and any other lease agreement(s) for the office space, warehouse and/or storage area.
- xx. A description of any affiliation(s) with other businesses or with a principal of any other business;
- xxi. If there is an affiliation with another business, a copy of the first page of that business's most recent federal tax return;
- xxii. Copies of current resumes for all principals of the business;
- xxiii. Proof of minority and/or female status for each owner, director, and officer in the form of:
 - aa. Copies of driver's licenses,
 - bb. Copies of passports, or
 - cc. Copies of birth certificates showing race and/or gender;
- xxiv. If Asian or Hispanic American, proof of the country of origin;
- xxv. If Native American, tribal roll membership, registration, or other official proof of tribal affiliation;
- xxvi. For businesses incorporated outside the State of Maryland, a copy of the foreign license obtained from the State Department of Assessments and Taxation; and
- xxvii. Any other documents considered necessary by the Chief of MWBOO.

g. Required Documents for a Limited Liability Company (LLC).

Applicant must complete and have notarized a Disclosure Affidavit and submit it to MWBOO with the documents listed below:

- i. A copy of the firm's current financial statement consisting of a balance sheet and operating statement, covering a one (1) year period, prepared on the letterhead of, and signed by an independent certified public accountant;
- ii. If requested and at the discretion of MWBOO, an audited statement prepared by a certified public accountant;
- iii. A copy of the firm's Federal tax returns, including all schedules, for the past two (2) years, signed;
- iv. If the business is less than two (2) years old, the personal tax returns for the principals;
- v. Copies of all State and local licenses required to do business in Maryland, if applicable (Professional if required);
- vi. If a license is in the name of an individual, proof of employment by the business;
- vii. A copy of the firm's Articles of Organization;
- viii. A copy of the Operating Agreement detailing the manner in which the business and affairs of the company will be managed and the manner in which the members will share in the assets and earnings;
- ix. Information and documentation, which demonstrate the independent investment of members to capitalize or start the business;

- x. Copies of third party agreements, such as rental or management service agreements;
- xi. A description of the major equipment owned or rented by the business, including copies of any rental agreements or proof of ownership (titles, invoices, etc.);
- xii. Copies of MBE or WBE program denials from other jurisdictions;
- xiii. Descriptions of the last three (3) jobs performed, including:
 - aa. The dollar amount,
 - bb. The completion date, and
 - cc. The name of the prime contractor or client;
- xiv. Proof of an operating office in the Baltimore City Market Area and any other lease agreement(s) for the office space, warehouse and/or storage area;
- xv. A description of any affiliation(s) with other businesses or with a principal of any other business;
- xvi. If there is an affiliation with another business, a copy of the first page of the business's most recent federal tax return;
- xvii. Copies of current resumes for all members of the business;
- xviii. Proof of minority and/or female status for each owner, director, and officer in the form of:
 - aa. Copies of driver's licenses,
 - bb. Copies of passports, or

- cc. Copies of birth certificates showing race and/or gender;
 - xix. If Asian or Hispanic American, proof of the country of origin;
 - xx. If Native American, tribal roll membership, registration, or other official proof of tribal affiliation;
 - xxi. For businesses incorporated outside the State of Maryland, a copy of the foreign license obtained by the Maryland State Department of Assessments and Taxation; and
 - xxii. Any other documents considered necessary by MWBOO.
- h. Required Documents for a Partnership. Applicant must complete and have notarized a Disclosure Affidavit and submit it to MWBOO with the documents listed below:
- i. A copy of the firm's current financial statement consisting of a balance sheet and operating statement, covering a one (1) year period, prepared on the letterhead of, and signed by an independent certified public accountant;
 - ii. If requested and at the discretion of MWBOO, an audited statement prepared by a certified public accountant;
 - iii. A copy of the firm's Federal tax returns, including all schedules, for the past three (3) years, signed;
 - iv. If business is less than two (2) years old, personal tax returns for the partners;
 - v. Copies of all State and local licenses required to do business in Maryland, if applicable (Professional if

- required);
- vi. If a license is in the name of an individual, proof of employment by the business;
 - vii. If the business has ever been bonded, a copy of the latest bond;
 - viii. Copies of the Partnership Agreements;
 - ix. Copies of the Buy-Out Rights Agreements;
 - x. Copies of the Profit Sharing Agreements;
 - xi. Copies of Third Party Agreements, such as rental or management service agreements;
 - xii. A description of the major equipment owned or rented by the business, including copies of any rental agreements or proof of ownership (titles, invoices, etc.).
 - xiii. Proof of the capital invested;
 - xiv. Copies of MBE or WBE program denials from other jurisdictions;
 - xv. Descriptions of the last three (3) jobs performed, including:
 - aa. The dollar amount,
 - bb. The completion date, and
 - cc. The name of the prime contractor or client;
 - xvi. Proof of an operating office in the Baltimore City Market Area and any other lease agreement(s) for the office space, warehouse, and/or storage area;

- xvii. A description of any affiliation(s) with other businesses or with a principal of any other business;
 - xviii. If there is an affiliation with another business, a copy of the first page of the business's most recent federal tax return;
 - xix. Copies of current resumes for all members of the business;
 - xx. Proof of minority and/or female status for each owner, director, and officer in the form of:
 - aa. Copies of driver's licenses,
 - bb. Copies of passports, or
 - cc. Copies of birth certificates showing race and/or gender;
 - xxi. If Asian or Hispanic American, proof of the country of origin;
 - xxii. If Native American, tribal roll membership, registration, or other official proof of tribal affiliation; and
 - xxiii. Any other documents considered necessary by MWBOO.
- i. Documents Required for a Limited Liability Partnership (LLP). Applicant must complete and have notarized a Disclosure Affidavit and submit it to MWBOO with the documents listed below:
- i. A copy of the firm's current financial statement consisting of a balance sheet and operating statement, covering a one (1) year period, prepared on the letterhead of, and signed by an independent certified public accountant;
 - ii. If requested and at the discretion of MWBOO, an audited

- statement prepared by a certified public accountant;
- iii. A copy of the firm's Federal tax returns, including all schedules, for the past two (2) years, signed;
 - iv. If business is less than two (2) years old, personal tax returns for the partners;
 - v. Copies of all State and local licenses required to do business in Maryland, if applicable (Professional if required);
 - vi. If a license is in the name of an individual, proof of employment by the business;
 - vii. If business has ever been bonded, a copy of the latest bond;
 - viii. A copy of the Certificate of Limited Liability Partnership;
 - ix. Copies of the Partnership Agreements;
 - x. Copies of the Buy-Out Rights Agreements;
 - xi. Copies of the Profit Sharing Agreements;
 - xii. Copies of third party agreements, such as rental or management service agreements;
 - xiii. Proof of the capital invested;
 - xiv. A description of the major equipment owned or rented by the business, including copies of any rental agreements or proof of ownership (titles, invoices, etc.);
 - xv. Copies of MBE or WBE program denials from other jurisdictions;

- xvi. Descriptions of the last three (3) jobs performed, including:
 - aa. The dollar amount,
 - bb. The completion date, and
 - cc. The name of the prime contractor or client;
- xvii. Proof of an operating office in the Baltimore City Market Area and any other lease agreement(s) for the office space, warehouse, and/or storage area;
- xviii. A description of any affiliation(s) with other businesses or with a principal of any other business;
- xix. If there is an affiliation with another business, a copy of the first page of the business's most recent federal tax return;
- xx. Copies of current resumes of all partners of the business;
- xxi. Proof of minority and/or female status for each owner, director, and officer in the form of:
 - aa. Copies of driver's licenses,
 - bb. Copies of passports, or
 - cc. Copies of birth certificates showing race and/or gender;
- xxii. If Asian or Hispanic American, proof of the country of origin;
- xxiii. If Native American, tribal roll membership, registration, or other official proof of tribal affiliation; and
- xxiv. Any other documents considered necessary by MWBOO.

- j. Documents Required for a Sole Proprietorship. Applicant must complete and have notarized a Disclosure Affidavit and submit it to MWBOO with the documents listed below:
- i. A copy of the firm's current financial statement consisting of a balance sheet and operating statement, covering a one (1) year period, prepared on the letterhead of, and signed by an independent certified public accountant;
 - ii. If requested and at the discretion of MWBOO, an audited statement prepared by a certified public accountant;
 - iii. A copy of the firm's Federal tax returns, including all schedules, for the past two (2) years, signed;
 - iv. If business is less than two (2) years old, personal tax returns for the partners;
 - v. Copies of all State and local licenses required to do business in Maryland, if applicable (Professional if required);
 - vi. If a license is in the name of an individual, proof of employment by the business;
 - vii. Proof of the capital invested;
 - viii. Copies of third party agreements, such as rental or management service agreements;
 - ix. A description of the major equipment owned or rented by the business, including copies of any rental agreements or proof of ownership (titles, invoices, etc.);
 - x. Copies of MBE or WBE program denials from other

jurisdictions;

- xi. Descriptions of the last three (3) jobs performed, including:
 - aa. The dollar amount,
 - bb. The completion date, and
 - cc. The name of the prime contractor or client;
- xii. Proof of an operating office in the Baltimore City Market Area and any other lease agreement(s) for the office space, warehouse, and/or storage area;
- xiii. A description of any affiliation(s) with other businesses or with a principal of any other business;
- xiv. If there is an affiliation with another business, a copy of the first page of the business's most recent federal tax return;
- xv. Copies of resumes for principals of the business;
- xvi. Proof of minority and/or female status for each owner, director, and officer in the form of:
 - aa. Copies of driver's licenses,
 - bb. Copies of passports, or
 - cc. Copies of birth certificates showing race and/or gender;
- xvii. If Asian or Hispanic American, proof of the country of origin;
- xviii. If Native American, tribal roll membership, registration, or other official proof of tribal affiliation; and

- xix. Any other documents considered necessary by MWBOO.
 - k. Receipt of Documents. If the required/requested documentation is not received by MWBOO by the date indicated on the notification letter, the file will be closed and the applicant will have to re-submit the application.
3. Notice of Withdrawal. At any time, an Applicant for certification or recertification may request in writing to the Chief that the application be withdrawn. If the request for withdrawal is received after an on-site interview, the applicant must wait not less than twelve (12) months from the date of the approved withdrawal before reapplying for certification.
4. Recertification or Continuance of Certification.
- a. Notification from MWBOO. MWBOO will send a notice to all certified businesses approximately sixty (60) days prior to the two (2) year anniversary date of the certification. If the notice is returned marked “Undeliverable” or “Addresses Unknown”, a second notice will not be sent.
 - b. Application for Recertification.
 - i. Applicants must submit:
 - aa. A “No Change Affidavit” supplied by MWBOO certifying that there have been no changes that would affect the applicant’s eligibility for certification,
 - bb. A copy of the latest federal tax return for the business,
 - cc. Any information requested therein, and

- dd. Any additional information requested by MWBOO.
- ii. Investigation Process. The recertification process may include, among other things, site visits, personal interviews with the Applicant, and requests for specific additional information.
- iii. Requests for Additional Information. Any request for additional information shall be in writing.
- iv. Determination Notice.
 - aa. The Chief shall grant or deny the certification or continued eligibility of the Applicant in a timely manner, but not more than ninety (90) days following receipt of a complete application.
 - bb. In the event an application is denied, the Chief shall inform the Applicant of all material facts and conclusions upon which the denial was based.
- v. Protest.
 - aa. An Applicant receiving a denial shall have seven (7) days from the date of the adverse determination to protest the denial in writing.
 - bb. The Chief must render a written decision within twenty-five (25) days of receipt of the protest.
- vi. Appeal.
 - aa. If the denial of certification is affirmed by the Chief, the Applicant may request a hearing before the Minority and Women's Business Enterprise

Certification Appeals Board (“CAB”).

bb. The final decision of the CAB will not be subject to further review.

c. Continuance of Certification.

i. Certified firms must report any change in ownership or control of a business (e.g., new by-laws, owners, directors, etc.) to MWBOO within thirty (30) days of the change with supporting documents.

ii. The failure of the firm to report any changes in ownership or control shall constitute grounds for loss of certification.

5. Expansion of Services.

a. A certified firm may request an expansion of service. The expansion request shall be in writing and accompanied with supporting documents establishing that the firm has the necessary in-house resources of equipment, staff, expertise, experience, etc. to carry out work in NAICS Codes for which it was not previously certified.

b. MWBOO may conduct an on-site visit and evaluate the ability of the business to carry out the work based on the certification criteria for MBE/WBE certification. All of the certification processes and information requirements established in these regulations apply to expansion of services.

c. If a request for expansion of services is approved, the firm will receive a revised certification letter with the additional areas of service included.

d. If a request for expansion of services is denied, the firm will

receive a written denial within ninety (90) days of receiving the request.

- e. The appeals process for an adverse determination shall apply to the denial of expansion of services.

6. Graduation.

- a. If, on the effective date of the renewal application, the MBE or WBE firm has a three (3) year gross revenue average that meets or exceeds the revenue or employee totals specified by the size standards approved by the Board of Estimates, the firm will be placed in a pending status, but may not participate as a certified firm.
- b. During the next three (3) years, if the firm's annual gross revenue average or annual employment total decreases to less than the totals specified by the size standards approved by the Board of Estimates, the MBE or WBE firm may resume participation as a certified business enterprise through the recertification process.
- c. After three (3) years on nonparticipation, if the business enterprise continues to meet or exceed the revenue or employee totals noted above, the MBE or WBE is considered to have graduated and will no longer be certified.

7. Decertification.

- a. MWBOO may decertify a business that it determines no longer meets the standards for certification as a MBE or WBE. Reasons for decertification include, but are not limited to, the following:
 - i. The owners, directors, officers, their powers, and/or the by-laws have changed from those stated in the "Disclosure Affidavit" as well as represented in the application process

- and the business enterprise has failed to inform the Office of the change(s) within thirty (30) days of the change(s);
- ii. The business does not meet MBE/WBE eligibility criteria established for certification as a minority or women's business enterprise.
 - iii. The business, by operation of law, is not eligible to do business in Maryland;
 - iv. The business has refused to provide documents and/or information requested by MWBOO including, but not limited to, the following:
 - aa. A complete application and supporting documents,
 - bb. An interview by an MWBOO investigator, or
 - cc. An interview with the CAB;
 - v. The business or any of its owners, officers, and/or directors has made a material misstatement of fact related to eligibility of the business for certification and/or recertification as a minority or women's business enterprise in order to participate in the MBE/WBE Program;
 - vi. The business was mistakenly certified and/or recertified;
 - vii. The business has failed to comply with MBE/WBE contract compliance regulations and/or procedures established by MWBOO, the Board of Estimates, or any other City agency;
 - viii. The business or any of its officers, directors, and/or employees has violated provisions of Article 5, Subtitle 28

of the Baltimore City Code;

- ix. The business has failed to perform as an independent business enterprise;
- x. The business has performed as a “conduit,” “broker,” or “pass-through” for contracts contrary to industry practice;
- xi. The business has been debarred under the laws of the City, the State of Maryland, another state or local jurisdiction, a quasi-public entity, or the United States; or
- xii. The business or any of its officers and/or directors has violated State or Federal anti-trust laws or has been found guilty of a similar violation in another State.

b. If MWBOO determines that grounds exist for decertification, MWBOO will send notice to the certified firm. The notice shall include:

- i. The reason(s) for decertification;
- ii. The right to contest the decertification; and
- iii. A warning that the firm will be decertified if no response is received within seven (7) days of the date of the firm’s receipt of the notice.

c. If the firm fails to respond within seven (7) days, the Chief or designee shall issue an order decertifying the MBE or WBE firm for the reason(s) included in the notice.

D. Minority and Women’s Business Enterprise Certification Appeals Board Rules of Operation.

1. Purpose. The purpose of the Minority and Women’s Business Enterprise

Certification Appeals Board (CAB) is to hear appeals by firms that have been denied Minority and/or Women's Business Enterprise status; that have had their certification revoked, or; that have been denied recertification by MWBOO. The CAB acts in an appellate capacity only to determine if MWBOO erred in its decision based on the information presented by the appellant and/or obtained by MWBOO.

2. General Provisions.

- a. Board Membership and Tenure. The CAB shall be composed of five (5) citizens knowledgeable of Baltimore City procurement and procedures. One member shall be appointed by the President of the City Council and the other members appointed by the City Solicitor. Each CAB member shall serve at the pleasure of the designating authority.
- b. Hearings. The CAB will hear appeals as required. Scheduled hearings may be cancelled by the Chair of the CAB or the Chief when circumstances warrant such action.
- c. Notice. The CAB members shall be notified not less than thirty (30) days prior to any hearing.
- d. Quorum. A quorum shall be three (3) members.
- e. Public Notice. The hearings of the CAB are subject to the Maryland Open Meetings Act. At the discretion of the Chair of the CAB, portions of the hearing may be closed to the public to receive advice from counsel or MWBOO staff or reports from MWBOO on the status of pending matters.
- f. New or Revised Information. New or revised information shall not be considered by the CAB.

3. Appeals.

- a. The CAB shall hear all appeals of decisions rendered by the Chief.
 - b. The CAB is bound by Article 5, Subtitle 28 of the Baltimore City Code and these regulations pertaining to eligibility and criteria for MBE/WBE status.
 - c. Confidential Internal Worksheet and Evaluation Forms will be prepared and provided each CAB member prior to the appeal hearing. Forms shall specify the basis for denial of certification. The complete MBE/WBE application file will also be provided each CAB member.
 - d. Decisions by the CAB shall be based on factual evidence and shall cover all City codes and regulations cited by the Chief in his decision. The decision will determine if the Chief was erroneous in his/her determination.
 - e. The appellate decision of the CAB shall be final.
4. Notice of Appeals.
- a. Notice of appeals must be received by MWBOO within thirty (30) days of the affirmation to deny certification. Notice of appeal received after thirty (30) days of receipt of the Chief's final decision will not be considered.
 - b. Appellants' appeals of MWBOO decisions will be scheduled for a hearing before the CAB the timely receipt of the notice of appeal by MWBOO.
 - c. Appellants will be notified in writing of the scheduled hearing at least twenty (20) days prior to the hearing.
 - d. Appellants shall not communicate with Board members prior to the hearing.

- e. Appellants may request postponement of hearing either in writing or orally, not less than three (3) days prior to the scheduled hearing. Failure to request postponement in a timely manner will be cause for the CAB to proceed with the scheduled hearing. Appeal hearing not attended by the appellant will be cause for the CAB to base their decision strictly on the documentation in the appellant file. Request for more than two (2) postponements will not be honored.

5. Hearing Procedures.

- a. After determining a quorum exists, the President of the CAB shall call the hearing to order.
- b. The President of the CAB will call each Appellant in order of their scheduled times and explain the CAB procedures.
 - i. The Appellant will be granted fifteen (15) minutes to address the CAB. Appellant may be questioned by the CAB members as required.
 - ii. The MWBOO representative will be given fifteen (15) minutes to present the material facts and analysis of the records and documents submitted by the applicant. The MWBOO representative may be questioned by the CAB members as required.
 - iii. The Appellant will be granted five (5) minutes for rebuttal.
 - iv. There may be further discussion and/or further questioning by the CAB members.
 - v. Formal rules of evidence shall not apply.
 - vi. No new evidence will be allowed by the Appellant or the

MWBOO representative.

- vii. The hearing will be conducted in accordance with Roberts Rules of Order, as modified by policies.
- viii. Any person may be excluded from the hearing for conduct which interferes with the hearing process.

6. Decisions by the CAB.

- a. After the CAB concludes its deliberations, the CAB shall take a vote and render one of the following decisions:
 - i. Uphold the decision rendered by the Chief or
 - ii. Overturn the decision rendered by the Chief and grant minority and/or women business enterprise certification in accordance with Article 5, Subtitle 28 of the Baltimore City Code.
- b. All decisions of the CAB shall be in writing and issued within sixty (60) days of the decision.

7. Rules of the CAB. All rules promulgated by the CAB and the Chief, will only become effective upon majority vote of the CAB, approval by the Chief, and approval by the Board of Estimates.

E. Annual Participation Goals.

- 1. Purpose. Annual participation goals are aspirational goals that aid the City in its annual evaluation of the effectiveness of the Minority and Women's Business Enterprise Program. Annual participation goals are not quotas.
- 2. Establishment. On or about July 1st of each year, the Board of Estimates, with the advice of MWBOO, must establish the participation goals for Minority Business Enterprises and Women's Business Enterprises.

3. Setting Annual Participation Goals.

- a. Annual participation goals are based on demonstrable evidence of the availability of qualified, ready, willing, and able MBE's and WBE's relative to all businesses ready, willing, and able to participate on City contracts. The goal setting process involves several steps.
- b. Determining a base figure for the relative availability of MBE's and WBE's expressed as a percentage. The following data sources may be used to determine a base figure:
 - i. Data from the most recent disparity study;
 - ii. City contractor prequalification data;
 - iii. Adjustments, if any, to the base figure to arrive at a final figure;
 - iv. Anecdotal evidence on the availability and capacity of MBE's and WBE's in the market area;
 - v. Evidence from disparity studies conducted within the market area by other jurisdictions; and
 - vi. Determining sub-goals for each protected group using the data sources described in this Section where appropriate.

F. Setting Contract Goals.

1. Establishment. MWBOO must establish MBE and WBE participation goals on each specific contract/agreement, including third-party contracts involving PILOTS, TIFs, GRANTS, and all other contracts involving fiscal assistance from the City in the amount of \$50,000 or more with the exception of City contracts where federal or state MBE, WBE, or DBE

goals apply. MBE and WBE goals may not apply to sole source or emergency contracts.

2. Considerations.

a. The M/WBE goal and the sub-goals, if applicable, must be set for each specific contract, considering, but not limited to, the following factors:

i. The extent to which the work to be performed can reasonably be segmented to allow for MBEs and WBEs to participate on the contract;

ii. A determination of the number of certified MBEs and WBEs that potentially could perform the identified work; the contract specifications;

iii. The level of utilization of MBEs and WBEs in past contracts awarded by the City;

iv. The adverse impact on non-MBEs and WBEs; and

v. Any other relevant factors.

b. MWBOO must consult with the contracting agency, the City Purchasing Agent, or both when establishing goals on a contract.

3. Subgoals. For construction contracts of \$1,000,000 or more, MWBOO may, in consultation with the contracting agency, set goals for MBEs divided into sub-goals for African American, Hispanic American, Asian American, and Native American-owned firms. MWBOO will determine the necessity and feasibility of subgoals on a case-by-case basis.

4. Agency Action.

a. Prior to advertising a contract or RFP, the total cost of which is

estimated to be \$50,000 or more, the contracting agency submits either a Goal Information Sheet or a Waiver Request to MWBOO.

- b. A Goal Information Sheet provides an itemized list of the services and goods that are required for the contract along with the estimated cost for each. The estimated cost of the total contract is also indicated.
- c. The contracting agency may request that MWBOO waive or reduce the contact goals by submitting a Waiver Request before bids or solicited.
- d. Once goals are determined, the goals must be clearly stated in all advertisements, solicitations, and solicitation documents. If subgoals have been established, they must also be included.

5. Office Action.

- a. City-Owned Contracts. Based upon the availability of MBEs and WBEs that can provide each of the itemized services and/or goods, the MBE and WBE participation are determined. The availability of MBEs and WBEs is calculated as a percentage of the total number of certified firms to the total available firms.
- b. Private Development Agreements. Every contractor, developer, corporation, or individual receiving final assistance from or through the City must submit to MWBOO a completed “Commitment to Comply” with the City’s MBE/WBE requirements. The contractor, developer, corporation, or individual must also submit its project budget to facilitate establishing MBE and WBE participation goals for the project.
- c. Participation goals on private development are determined in the following manner:

- i. Subtract the following line items from the project's total budget (hard and soft costs) where:
 - aa. There is only one source for the service or commodity;
 - bb. There are no MBEs or WBEs certified to provide the service;
 - cc. Certified MBEs and/or WBEs are unavailable to provide the service; and
 - dd. Any non-discretionary budget costs, such as fees, permits, etc.
- ii. The remaining budget after the aforementioned exclusions is subject to the City's 27% MBE participation requirement and 10% WBE participation requirement.

6. Contracts Initially Less than \$50,000 that Exceed \$50,000 during Term.

- a. Contracts that initially fall under the \$50,000 threshold to establish MBE and WBE participation goals could still end up passing that goal through subsequent increases and renewals.
- b. If, following an increase or renewal, a contract exceeds \$50,000 and is more than 10% of the original contract amount, MBE/WBE threshold shall be established for the contract. However; these goals will not retroactively apply to the original contract amount.
- c. Once goals are set, the vendor shall have ten (10) days to present a Statement of Intent.

G. Counting MBE and WBE Participation.

1. Counting MBE and WBE Participation.
 - a. Value of Work.
 - i. When an MBE or WBE participates on a contract, MWBOO must count only the value of the work actually performed by the MBE or WBE subcontractors toward the participation goal.
 - ii. This includes the cost of supplies and materials obtained by the MBE or WBE incidental to the work on the contract, including equipment leased by the MBE or WBE (except supplies and equipment the MBE or WBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - b. Dual Certification. A business certified as both an MBE and as a WBE may be counted towards either the MBE or WBE contract goal, but not towards both.
 - c. Payment Required to Count MBE and WBE Participation. Participation of an MBE or WBE cannot be counted towards the goal until amount being counted has been paid to the MBE or WBE.
 - d. Self-Performance. A certified MBE or WBE that has been awarded a contract as a prime contractor may count up to 50% of the dollar value of the total work it intends to perform on the contract with its own forces toward the respective MBE or WBE goal.
2. Commercially Useful Function. The contractor may count toward the contract goals only expenditures to certified businesses that perform a commercially useful function(s) in the execution of the contract. The

firm's role cannot be a superfluous step added in attempt to obtain credit toward participation goals. In determining whether an MBE or WBE is performing a commercially useful function, MWBOO will examine similar transactions and industry practices. A MBE or WBE performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

- a. To determine whether a certified business enterprise is performing a commercially useful function, MWBOO must evaluate:
 - i. The amount of work subcontracted;
 - ii. Industry practices;
 - iii. Whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing; and
 - iv. Other relevant factors.
- b. The MBE or WBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself.
- c. An MBE or WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation.
- d. If a MBE or WBE does not perform or exercise responsibility for at least 90% of the total cost of the contract with its own work force, it is presumed that the MBE or WBE is not performing a commercially useful function.

- e. When a MBE or WBE is presumed not to be performing a commercially useful function, the MBE or WBE may present evidence to rebut this presumption. The MBE or WBE must provide written documentation to the Chief, whose decision is final.
3. Joint Ventures. When an MBE or WBE performs as a participant in a joint venture, only the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the contract that the MBE or WBE performs with its own forces count toward the MBE or WBE goal.
4. Suppliers and Manufacturers.
- a. Supplier-Manufacturers. A bidder may count towards the participation goal 100% of its expenditure to a certified business enterprise manufacturer.
 - b. Wholesalers and Manufacturer's Representatives. A bidder may count 100% of its expenditure to a certified business enterprise who is a wholesaler warehousing the goods supplied or a manufacturer's representative.
 - c. Non-Manufacturing Suppliers. Only 25% of the applicable contract goal may be attained by expenditures to a certified business enterprise that is a non-manufacturing supplier. Example: If the MBE goal is 10%, only 2.5% of that goal may be attained by expenditures to certified businesses that are non-manufacturing suppliers.
5. Insurance Companies, Travel Agents and Financial Institutions. Bidders may count towards the contract goals the fees or commissions charged by certified MBE or WBE business enterprises that are insurance companies, travel agents, or financial institutions. The fees or commissions must be reasonable and not excessive as compared with fees or commissions for

similar services.

6. Non-Affiliation. A bidder is precluded from using a certified business enterprise to meet a contract goal if the bidder has a financial interest in, an interest in the ownership or control, or is significantly involved in the operation of the certified business enterprise.

H. Utilization Requirements.

1. Contracts between \$1,000 – \$4,999. The standards and procedures outlined below apply to every contract for which the estimated cost is \$1,000 or more and less than \$5,000.
 - a. MWBOO must provide the contracting agency with a list of certified businesses enterprises qualified to provide each of the materials, equipment, supplies, or services that the contracting agency indicates are required by the City. The MWBOO directory shall serve as the list.
 - b. The contracting agency must solicit bids from certified business enterprises that are certified to supply the required materials, equipment, supplies or services.
 - c. The contracting agency must provide certified businesses every practical opportunity to submit bids.
2. Contracts between \$5,000 - \$49,999. The standards and procedures outlined below apply to every contract for which the estimated cost is \$5,000 or more and less than \$50,000.
 - a. Before the solicitation of bids, the contracting agency may furnish MWBOO with an informational copy of all bid conditions and requests for proposals.
 - b. MWBOO may recommend to the contracting agency certified

business enterprises that can be solicited directly to submit bids.

3. Contracts of \$50,000 or More. The standards and procedures outlined below apply to every contract for which the estimated cost is \$50,000 or more.
 - a. The bid conditions and requests for proposals must require each bidder or offeror to include in its bid a completed certified business enterprise participation affidavit in which the bidder/offeror commits to utilize certified business enterprises in a percentage that equals or exceeds the applicable contract goals. Any bid that does not include a completed participation affidavit is non-responsive.
 - b. Prior to bid opening, the bidder/offeror must submit to the City executed Statement of Intent forms that specify:
 - i. The name of each certified business enterprise the bidder/offeror intends to use on the contract;
 - ii. Whether that subcontractor is a minority business enterprise or a women's business enterprise;
 - iii. The dollar value of each subcontract, if not a requirements contract;
 - iv. If a requirements contract, only the participation percentage must be stated; and
 - v. The scope of the work to be performed under the subcontract.
 - c. The Statement of Intent must be signed by the prime and the MBE or WBE subcontractor. Any material changes or corrections on the

form must be initialed by both the prime and the subcontractor. A material change is a change in the scope of services the subcontractor is to provide or a change in the dollar amount of the subcontract or participation percentage of the subcontract if it is a requirements contract.

- d. Except as provided in (e) below, if the bidder or offeror fails to meet the requirements of this section, the bid or proposal shall be determined non-responsive.
- e. If all bids or offers are found to be noncompliant with MBE/WBE goals by the Minority and Women's Business Opportunity Office (MWBOO), the Procuring Agency may inform all bidders of their noncompliance and allow them up to ten days to come into compliance. No award may be recommended to the Board unless the recommended awardee is compliant with the MBE/WBE goals.

4. Leases and Concessions

- a. City agencies must solicit bids from certified business enterprises that are certified to enter into leases or concession contracts.
- b. If, after investigation, a contracting agency determines that no qualified certified business is available, it must submit to MWBOO a waiver request.

5. Verifying Certification. Bidders and offerors are responsible for verifying that all MBEs and WBE's to be used are certified business enterprises and certified to provide the goods or services listed on the Statement of Intent form.

6. Contract Specifications. Each contract must:

- a. Provide that failure of any bidder, contractor, or subcontractor to

comply with Article 5, Subtitle 28 of the Code is a material breach of contract;

- b. Require that, during its term, the contractor will achieve the MBE and WBE participation goals;
- c. Require the contractor to pay its MBE and WBE subcontractors within seven (7) calendar days after the contractor receives payment from the City; and
- d. Require the contractor, beginning with the contractor's second pay, submit proof that all subcontractors have been paid out of the proceeds of the prior payment unless a bona fide dispute, documented in writing, exists between the contractor and the unpaid MBE or WBE subcontractor.

7. Reports. As a condition of each contract, the awardee of the contract must submit the following when requested by MWBOO:

- a. Copies of signed agreements with the MBEs and WBEs being utilized on the contract;
- b. Reports verifying payments to the MBEs and WBEs being used to achieve the contract goals; and
- c. Reports and documentation on the extent to which the contractor has utilized MBEs and WBEs on projects not subject to MBE and WBE requirements.

I. Waivers.

1. Agency's Pre-Solicitation Waiver Request.

- a. A contracting agency may request that MWBOO waive or reduce the contract goals by submitting the reasons for the request in

writing before bids or requests for proposals are solicited.

- b. The criteria for granting a waiver include:
 - i. The reasonable and necessary requirements of the contract render subcontracting infeasible;
 - ii. There are not certified and available MBEs or WBEs capable of providing the goods or services required by the contract despite good faith efforts to locate them;
 - iii. It is a sole source procurement; or
 - iv. It is an emergency procurement.

2. Bidder's Pre-Award Waiver Request.

- a. A bidder may submit a request at the time of bid opening that MWBOO waive or reduce the contract goals.
- b. The criteria for granting a waiver include:
 - i. Acknowledgement as to whether or not the bidder contacted MWBOO for assistance;
 - ii. Documentation of the bidder's/offeror's good faith efforts to contact and negotiate with MBEs and WBEs, including a list of the MBE and WBE firms that were contacted;
 - iii. A statement of the reason(s) the bidder is unable to secure sufficient MBE and/or WBE participation to meet the stated goals;
 - iv. A statement of the efforts made by the bidder to select portions of the contract to be performed by MBEs and WBEs; or

- v. For each MBE or WBE that placed a bid that is considered unacceptable, a statement that explains the basis for that conclusion.

3. Contractor's Post-Award Request.

- a. After a contract award, if a contractor is unable to meet any contract goal due to the inability of the MBEs and/or WBEs listed at the time of bid opening to perform, the contractor must seek to substitute certified businesses to fulfill the contract goals.
- b. If, after reasonable good faith efforts, the contractor is unable to find a substitute, the contractor must request a post-award waiver from the Chief.
- c. The criteria for granting a waiver include:
 - i. A statement of the reason(s) for the contractor's inability to meet the goal and
 - ii. Documentation of a good faith effort to resolve the problem with the MBE or WBE.

IV. Debarment / Suspension Regulations

- A. Scope and Authority. The Board has the authority to issue these rules and regulations pursuant to the Baltimore City Code Art. 5, § 40-3 to carry out this subtitle. This Section shall be known as the “Debarment Regulations.”
- B. Debarment Definitions. These Debarment Regulations incorporate the terms defined in the Baltimore City Code Art. 5, § 40-1; except as follows:
1. “Convicted” of the bribery offenses described in the Baltimore City Code Art. 5, §§ 40-5, 40-6 includes:
 - a. Judgment of conviction;
 - b. An accepted plea of nolo contendere; and
 - c. The imposition of probation before judgment.
 2. “Convicted” under the laws of the City, this State, another state, or the United States described in the Baltimore City Code Art. 5, § 40-7 includes: (1) judgment of conviction; (2) an accepted plea of nolo contendere; and (3) the imposition of probation before judgment.
- C. Written Notices. All required notices given under these Debarment Regulations must be in writing.
- D. Investigation and Preliminary Recommendation to the Board. Upon completion of an investigation,³² the City Solicitor, or his designee, shall make a recommendation to the Board³³ whether the Board should: (1) institute debarment proceedings against the person; and (2) suspend the person pending a final decision.
- E. Suspension Pending Decision.

³² See Baltimore City Code Art. 5, §§ 40-11, 40-12.

³³ See Baltimore City Code Art. 5, § 40-13

1. Suspension of Person and / or Business Pending Decision. Pending a final decision on debarment, the Board may suspend the person against whom debarment proceedings have been instituted.³⁴
2. The Board shall provide notice of the suspension to the person.
3. If a person suspended by the Board is a principal in a business, then the business is suspended to the same extent that the person is suspended under Baltimore City Code Art. 5, subtitle 40 on receipt of notice of its suspension.
4. Modification or Termination of Suspension. A person or business suspended pursuant to the Baltimore City Code Art. 5, § 40-18 may petition the Board to modify or terminate the suspension.
5. Contents of the Petition for Modification or Termination of Suspension. The person or business petitioning for modification or termination of suspension shall submit to the Board information and argument on whether the basis for the suspension stated in the notice exists.
6. Hearing on the Petition for Modification or Termination of Suspension.
 - a. The Board may, in its sole discretion, conduct a hearing on the petition, after notifying the parties of the time and place of the hearing.
 - b. The Board may delegate the authority to conduct the hearing to a designee, who is a member of the Maryland Bar not currently employed by the City.
 - c. The Board, or its designee, shall set reasonable guidelines and limitations for the presentations to be made at the hearing.

³⁴ See Baltimore City Code Art. 5, Subtitle 40.

d. If a designee conducts the hearing, the designee shall make a recommendation to the Board of whether the suspension should be modified, terminated or continued based on the information and argument presented to the designee.

7. Decision by the Board.

a. The Board shall determine whether the integrity of the contracting process and the best interests of the City would be served by continuing, modifying, or terminating the suspension.

b. The Board shall give the petitioner notice of the Board's decision.

F. Notice, Hearing, and Decision – Automatic Debarments.

1. Notice and Opportunity for Hearing. When the Board learns of the conviction, the Board shall: (1) notify the person of the person's automatic debarment;³⁵ and (2) will give the person a reasonable opportunity to be heard at a scheduled meeting of the Board, within 30 days after such notice, on whether the basis for debarment stated in the notice exists.

2. Written Submission before Hearing. Within 10 days after the Board notifies a person of an automatic debarment, the person may submit to the Board in writing information and argument on whether the basis for automatic debarment stated in the notice exists.

3. Hearing. On consideration of debarment by the Board under the Baltimore City Code Art. 5, § 40-5: (1) the Board will permit the person to present oral argument to the Board, or to waive oral argument and submit written argument only; (2) the presiding member of the Board shall determine, in their sole discretion, all procedural issues, including imposing reasonable time limits on each party's oral argument; (3) the parties shall each have no more than 20 minutes to present oral argument, unless otherwise extended by the Board; (4) the City Solicitor shall

³⁵ See Baltimore City Code Art. 5, § 40-5.

proceed first and may reserve part of their allotted time for rebuttal; and (5) the person shall proceed second.

4. Decision of Board. Subject to the deferral of the decision by the Board for a reasonable period of time, the Board shall determine whether the person is debarred from entering into or performing under a contract with the City until the debarment is removed in accordance with Part V of the Baltimore City Code Art. 5, subtitle 40.

G. Notice and Hearing – Other Debarments.

1. Notice of Proposed Debarment. When the Board receives information that indicates a basis for debarring a person under the Baltimore City Code Art. 5, § 40-6, § 40-7, or § 40-8, the Board may institute debarment proceedings by providing notice to that person (“Notice of Proposed Debarment”) which shall include: (1) the grounds for the debarment; (2) notice of the person’s right to a hearing before the Board; and (3) notice that the right to a hearing is waived unless the person files a request for hearing, as required by the Baltimore City Code Art. 5, § 40-17(c).
2. Request for Hearing. The request for a hearing must: (1) admit or deny each fact in support of the grounds for the debarment stated in the Board’s Notice of Proposed Debarment; (2) provide detailed, substantive reasons for each denial; (3) identify any legal issues or defenses that the person intends to raise during any proceeding; and (4) identify any mitigating factors that the person intends to prove.
3. Written Submissions before Hearing.
 - a. Within 10 days after filing a request for a hearing, the person must submit to the Board: (1) a list of the names and addresses of all individuals that the person intends to call as witnesses during the hearing; and (2) identify all documentary evidence which supports

the person's opposition to the grounds for the debarment in the Board's Notice of Proposed Debarment.

- b. In lieu of the submissions to the Board required in G.3(a), the person may waive the oral hearing provided G.4. and described in G.5. and submit argument to the Board in written form only.

4. Hearing Generally.

- a. The Board shall conduct a hearing within 90 days after receipt of the request for a hearing required in the Baltimore City Code Art. 5, § 40-17(c) or at such other time as may be extended by the Board for good cause shown.
- b. The Board shall notify the parties of the time and place of the hearing.
- c. The Board may delegate the authority to conduct the hearing to a designee, who is a member of the Maryland Bar not currently employed by the City ("designee").

5. Conduct of the Hearing.

- a. The Board, or its designee, shall conduct the debarment hearing in the manner described in this subsection, reserving the authority to resolve issues concerning: (1) offers of proof; (2) the admissibility of evidence; and (3) other matters of hearing procedure.
- b. The Board or its designee shall set reasonable guidelines and limitations for the presentations to be made at the hearing before the Board or its designee including, but not limited to: (1) testimony shall be under oath and subject to cross examination; (2) limits may be placed on cross-examination; (3) affidavits and depositions may be considered; (4) hearsay evidence may be admitted and given appropriate weight; (5) incompetent, unreliable, irrelevant, or unduly repetitious evidence will be

excluded; (6) evidence may be admitted at the Board's own request; (7) the record of the hearing may be kept open after the close of evidence, for good cause shown, for the receipt of additional evidence or submissions by the parties; (8) make other rulings necessary to promote fairness and efficiency in the hearing process; and (9) may request that the parties submit proposed findings of fact and conclusions of law to the Board, or its designee, within 10 days after of the conclusion of the hearing.

- c. The Board, or its designee, shall give effect to the rules of privilege recognized by law.
- d. The City has the burden of proof and the burden of persuasion.
- e. The Board, or its designee, in conducting the hearing, may follow the usual order for the presentation of evidence (City first, person subject to debarment second, City rebuttal, if any) permitting: (1) each party to be represented by counsel authorized to practice law in Maryland; (2) the presentation of direct and cross-examination of witnesses; (3) the offer of other evidence; and (4) the presentation of opening and closing statements in support of the parties' respective positions.
- f. The Board, or its designee, shall have the authority to take such further action as may be necessary to preside over the debarment hearing and to render the recommended proposed findings of fact and conclusions of law to the Board, a copy of which shall be submitted to the parties.

H. Duties of the City – Other Debarments. In addition to any other duties described herein, the City shall have the responsibility to ensure that: (1) the hearing is on the record and open to the public, unless otherwise provided by law; (2) the creation, at the City's cost, of a verbatim recordation of all testimony, except that a party requesting a copy of the transcript must bear the expense of the transcript;

and (3) a record of the proceedings, including the verbatim recordation or transcript of the proceedings, the exhibits and the recommended proposed findings of fact and conclusions of law submitted to the Board for consideration in rendering a decision pursuant to the Baltimore City Code Art. 5, § 40-19, shall be maintained and retained.

I. Decision of the Board – Other Debarments.

1. The Board shall: (1) determine whether the integrity of the contracting process and the best interests of the City would be served by debarment of the person from entering into or performing contracts with the City; and (2) for that purpose, consider all relevant factors, including: (i) the nature and seriousness of the act that caused the person to be subject to debarment; (ii) the time the act occurred; (iii) whether and to what extent the person cooperated with authorities investigating the matter; (iv) the conditions under which the person cooperated; and (v) the conduct of the person since the act occurred.
2. The Board shall notify the person of the Board's decision within 90 days after the hearing, unless the Board, in its sole discretion, extends the time period.
3. The notice of decision issued by the Board shall: (1) state whether the person is debarred for the act(s) in question; and (2) if the person is debarred, state the period of debarment.
4. The Board shall notify a business of any debarment of the business under the Baltimore City Code Art. 5, § 40-20.

J. Reinstatement.

1. Automatic Reinstatement. If the conviction that was the basis for debarment or suspension is reversed or otherwise voided, the debarment or suspension terminates automatically.

2. Petition for Reinstatement. A person debarred under the Baltimore City Code Art. 5, subtitle 40 may petition the Board for removal of the debarment, as provided in the Baltimore City Code Art. 5, § 40-22. The petition shall include: (1) each fact in support of reinstatement; (2) detailed, substantive reasons for reinstatement; (3) all legal issues on which the person intends to rely during the reinstatement hearing; and (4) whether the integrity of the contracting process and the best interests of the City would be served by continuing the debarment.
3. Hearing.
 - a. Within 90 days after receipt of a petition, the Board shall conduct a hearing, which may be extended by the Board for good cause shown.
 - b. The Board shall notify the parties of the time and place of the hearing.
 - c. The Board may delegate the authority to conduct the hearing to a designee, who is a member of the Maryland Bar not currently employed by the City (“designee”).
 - d. The Board, or its designee, shall set reasonable guidelines and limitations for the presentations to be made at the hearing.
 - e. If a designee conducts the hearing, the designee shall make a recommendation to the Board of whether the debarment should be removed by determining whether the integrity of the contracting process and the best interests of the City would be served by continuing the debarment and considering, for that purpose, all relevant factors, including those listed in the Debarment Regulations § I.1.
4. Decision. Within 90 days after receipt of the petition, the Board shall notify the person of the Board’s decision. The notice shall state: (1)

whether the debarment is removed or continued; and (2) if continued, how long the person must wait before again petitioning for reinstatement.

V. Severability

If a court of competent jurisdiction holds that part of these regulations is invalid, the invalidity does not affect other parts.

VI. Effective Date

These regulations become effective July 1, 2019.

VII. Amendments

The Board may amend these regulations from time to time with advance notice of the changes and an opportunity for public comment.

VIII. Appendices

See the attached list of appendices, which are incorporated herein by reference. The City may change this list of appendices as appropriate.

Appendices³⁶

Board of Estimates Resolutions

- Lack of Duplicate Bid Book (6/8/77) (Board of Estimates Minutes)
- Baltimore City Contracts Bid Security (10/19/88)
- Self-Insurance Bond Program (2/8/89)
- Delinquent Taxes (4/89)
- National Labor Relations Act (*Unfair/Fair Labor Practices*) (6/29/94)
- Architectural & Engineering Services (6/29/94)
- Apprenticeship Training (6/28/95)
- Contracts – Health Care Provider Panels (11/95)
- Workers Benefits Plans (9/4/96)
- Guidelines for Consultant Selection Procedures (3/5/97)
- Increase to Dollar Amounts for Commodity and Service Contracts (6/22/05) (Board of Estimates Minutes)
- Setting Initial Threshold Amounts (12/22/10)
- Design Build Procurement (11/2/11)
- Waiver of Attorney-Client Privilege (5/7/14)
- Indemnification of Officers and Directors of Certain Quasi-Public Corporations and Entities (5/6/15)
- Setting Threshold Amount for Professional Services (6/17/15)
- HubZone Neighborhood Preference (10/28/15)
- Economic Benefits Evaluation Factor (10/28/15)
- Rules for Qualification of Contractors, Performance Evaluations of Construction Contractors and Consultants and Procedures and Guidelines for Hearings Before the Office of Boards and Commissions Review Committee (11/30/16)
- Non-Architectural or Engineering Professional Services (3/20/19)
- Non-Competitive Procurements (3/20/19)

Executive Orders

- Change and Extra Work Order Procedures (Schaefer Memo dated 2/17/76)
- Nondiscrimination (12/30/76)
- Code of Conduct (6/13/95)
- Baltimore City's Youthworks (1/14/08)
- Employ Baltimore (12/18/13)

³⁶ As of March 14, 2019

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Chief Solicitor

Date

APPROVED BY THE BOARD OF ESTIMATES:

Clerk

Date