

**Procurement Approval Process Study  
for  
Baltimore Efficiency and Economy Foundation**

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May 2008  
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# Procurement Approval Process Study

## Baltimore Efficiency and Economy Foundation

Prepared by

**Marsha R. B. Schachtel**

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**Johns Hopkins Institute for Policy Studies**

**May 2008, rev. December 2009**

### EXECUTIVE SUMMARY

The Johns Hopkins Institute for Policy Studies was engaged by the Baltimore Efficiency and Economy Foundation to comparatively analyze the procurement approval process in Baltimore City, other home rule Maryland counties, and selected cities around the country. The cities chosen are those that are similar to Baltimore in demographics, political and economic history, and/or government structure. Before 1990, New York City was the only other large U.S. city to have a Board of Estimates-like body that had authority over all contracts. New York City's 1990 Charter Revision eliminated the New York City Board of Estimate after the U.S. Supreme Court ruled it unconstitutional because it lacked proportional representation of the boroughs; procurement responsibilities of the Board of Estimate were delegated to the Mayor and the City Council, respectively.

#### Scope of the study

The scope of this study was limited – it did not involve an exhaustive analysis of procurement management in Baltimore City by the National Institute of Governmental Purchasing, Inc. in 2001. Rather it was designed to provide the facts about:

- What are the charter provisions governing procurement in each of the localities, including approval authorities and advertising and security requirements?
- What are monetary limits are codified in local charters? What monetary limits have been adopted by legislative bodies?
- How are the charter provisions changed, including the role of the legislative bodies?

#### Charter language

This analysis is as focused on how procurement thresholds are set and changed as it is on comparing the actual monetary limits. We begin with a summary of only what the charter in each locality specifies.

## Charter Provisions: Maryland localities

*(N/A = not addressed by the charter)*

Locality	Using agency direct purchasing w/o higher authority	Purchasing Agent purchasing w/o higher authority	Formal (advertised) bid requirements	Publication of bid opportunities	Bid bonds	Performance bonds
Anne Arundel County	N/A	N/A	To be set by ordinance; maximum \$25,000	Purchasing agent to determine	N/A	Purchasing agent to determine
Baltimore City	N/A	\$5,000	To be set by ordinance	>\$25,000, 2 times in 2 newspapers	To be set by ordinance, bid specs or order or regulation of using agency	Specifies when required
Baltimore County	N/A	N/A	To be set by ordinance	N/A	N/A	Purchasing agent to determine
Howard County	Amount to be set by Council	N/A	To be set by Council policies	N/A	N/A	N/A
Montgomery County	N/A	N/A	To be set by ordinance	N/A	N/A	N/A
Prince George's County	N/A	Multi-year contracts require Council approval	To be set by ordinance	Purchasing agent to determine	N/A	Purchasing agent to determine

Within Maryland, Baltimore City's charter includes far more prescriptive language than any other home rule locality examined. When their charters address the issues under investigation at all, they give the county's purchasing official or the County Council the power to set thresholds and determine bidding and contracting mechanics. None of the counties' charters include a numerical threshold, except as a part of an inaugural charter that empowered the legislative body to change the thresholds in the future. Anne Arundel County's ceiling on the formal bid threshold to be determined by the Council is the exception.

## Charter Provisions: Other U.S. Cities

(N/A = not addressed by the charter)

Locality	Using agency direct purchasing w/o Purchasing	Purchasing Agent purchasing w/o higher authority	Formal (advertised) bid requirements	Publication of bid opportunities	Bid bonds	Performance bonds
Atlanta	N/A	Purchases over \$300,000, not from lowest bidder, or made by other than competitive procurement require Council approval	To be set by ordinance	N/A	N/A	N/A
Cleveland	N/A	Council ordinance required for purchases above \$50,000; 2/3 vote by City Council required to raise limit	N/A	N/A	N/A	N/A
New York City	Threshold to be set by Commissioner of Citywide Administrative Services, up to \$5,000; higher threshold requires Comptroller approval (now \$100,000)	Purchases over \$5 million to be let by other than specified methods require Mayoral approval	Set by Procurement Policy Board and Council concurrently	Required publication in the City Record and elsewhere "as appropriate"; rules to be set by Procurement Policy Board	Set by Procurement Policy Board	N/A
Philadelphia	N/A	Contract renewal beyond one year requires Council approval	\$25,000 plus CPI adjustment every five years	Advertisement at least once a week for 2 weeks in one of 3 largest newspapers	Bid bond required as specified in bid solicitation	Performance bond required, terms set by Procurement Dept. and City Solicitor

**Charter Provisions: Other U.S. Cities (cont.)**

*(N/A = not addressed by the charter)*

Locality	Using agency direct purchasing w/o Purchasing	Purchasing Agent purchasing w/o higher authority	Formal (advertised) bid requirements	Publication of bid opportunities	Bid bonds	Performance bonds
St. Louis	N/A	Purchases over \$5,000 require Board of Standardization approval	Over \$5,000	Advertising required except for emergency procurements	N/A	N/A

Among the other large cities examined, Cleveland and St. Louis have charter language that requires higher level approval of day-to-day procurements – in Cleveland by the Council and in St. Louis by the Board of Standardization. New York City gives substantial power to using agencies to procure goods and particularly services, up to thresholds set by Administration control agencies but not prescribed in the Charter. Its Procurement Policy Board is specifically prohibited from involvement in individual purchasing transactions (as was the former Board of Estimate, ruled unconstitutional in 1990). Philadelphia’s charter is relatively unspecific, vesting authority in the Council, the Executive’s Department of Procurement, and the City Solicitor. Atlanta’s charter contains even fewer specifics, but sets a dollar limit that restricts procurement over \$300,000 without Council approval.

The Cleveland charter requires that a charter review commission review the charter every 20 years. The 2008 Commission, appointed in January, met weekly and reported to the City Council in August. Council approved all four of the procurement changes, and voters ratified the changes in November, 2008. The procurement changes included an increase in the threshold requiring Council approval from \$10,000 to \$50,000 (it was last changed in 1989), and empowerment of the Council to raise the limit in the future by two-thirds affirmative vote. The Department of Finance estimates that 200 pieces of legislation will be eliminated, and the procurement process reduced by an average of 20 weeks, lowering costs to both the City and the companies doing business with the City.

**Procurement thresholds**

For the record, the following table summarizes the procurement thresholds currently in force in the localities examined. These thresholds are set by a combination of charter provision, code, and regulations.

## Procurement Thresholds\*

Locality	Using Agency Purchasing Authority Limit	Procurement Director Purchasing Authority Limit	Competitive Formal Bid Threshold
Anne Arundel County	\$5,000	Unlimited	\$25,000
Baltimore City	\$1,000	\$5,000 unless transactions is approved by the Board of Estimates	\$25,000
Baltimore County	\$1,000	Over \$25,000 must be approved by County Exec or Council	\$25,000
Howard County	\$5,000	Unlimited	\$30,000
Montgomery County	\$5,000	Unlimited	\$25,000
Prince George's County	\$5,000	Unlimited, except multi-year	\$30,000
Atlanta	\$20,000	\$300,000	\$50,000
Cleveland	\$0	\$50,000	\$50,000
New York City	\$100,000	Unlimited	\$100,000
Philadelphia	\$5,000	Unlimited	\$25,000 + CPI adjustment
St. Louis City	\$500	Unlimited	\$5,000

*\*The thresholds listed here are general rules; all have exceptions and variations for different source selection methods and types of procurements (goods or services)*

### Process for changing the procurement process

Baltimore City and all Maryland home rule counties are bound by the Maryland Constitution provisions governing the amendment of charters (MD.Const.Art 11-A, §4; Article XI-A. Local legislation. §5. Charter amendments).

*Amendment of a locality's charter requires an ordinance of the legislative body or a petition signed by 20 percent of registered voters, approved by a majority of voters at the next scheduled election.*

The cities in other states have similar requirements for charter amendments – requiring passage of ordinances and ratification by voters – but vary in their requirements for regular charter review.

All but St. Louis and Philadelphia permit their local legislatures to establish thresholds for formal competitive bidding.

### Issues for consideration in Baltimore

This examination of the legal underpinnings of the procurement approval process in Maryland and in other cities has led to the following observations about paths Baltimore City might take to addressing the multiple challenges of operating an equitable and efficient purchasing system.

## **The value of money over time**

Particularly when municipal charters are not regularly reviewed and updated, specific codified dollar amounts lose the relationship with economic conditions intended by the charter's framers over time as inflation comes into play. Five thousand dollars in 1986 has the buying power of \$9,741.24 in 2008.<sup>1</sup> Philadelphia has pegged one of its charter-specified thresholds to the Consumer Price Index; almost all the other localities' charters have given their legislative bodies or other specially created public entities the power to adjust these limits to changing economic conditions.

*Baltimore Efficiency and Economy Foundation recommends: Removal of specific dollar amounts from the Charter.*

### **Efficiency**

Sluggishness in the purchasing system imposes costs on all parties: agencies that need goods and services in order to fulfill their public purpose are prevented from doing so in a responsive manner; citizens who depend on government services suffer; and companies (particularly small ones) that are seeking to participate in delivering government service incur the costs of uncertainty and delay, including missed opportunities, difficulty retaining workers, cash flow squeezes, and, in some cases, extended payment of interest on debt. Although the intent of some of the City's focused procurement goals is to support the growth of small, minority- and women-owned businesses, pursuing a City contract could be a liability rather than a boon. The Finance Department estimates that obtaining Board of Estimates approval adds at least two weeks to the award process. Small transactions are costly. In FY2007, 27 percent of requisitions submitted to the Bureau of Purchasing (BOP) were for contracts valued at \$5,000 to \$25,000, representing only eight percent of City dollars (\$20 million out of \$236 million) spent by BOP. The clear answer is to streamline the process, but efforts to do so, to the benefit of using agencies, citizens, and companies, are hampered by the inflexibility of a fixed charter requirement.

*Baltimore Efficiency and Economy Foundation recommends: Removal of specific dollar amounts from the Charter. Substitution of a provision for democratically set thresholds for approvals of transactions.*

### **Transparency**

Through the unique institution of the Board of Estimates, the work of the City is done in public. While the Mayor has a majority of the vote, once a week, interested parties – including elected representatives of the people – have an opportunity to see in detail how the City is spending their tax dollars and other revenues, and to comment or protest if they desire. Other localities without Boards of Estimates have taken on the challenge of balancing the need for transparency in city government with the need for efficiency in several ways. As purchasing goes electronic, it becomes possible to allow all who wish to see to view the flow of contracts authorized by the locality. When these systems operate in

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<sup>1</sup> Inflation Calculator, Consumer Price Index homepage, <http://www.bls.gov/CPI/>



close to real time, the possibility of challenging an approved purchase before it is executed becomes a reality. Several jurisdictions require the advertising of their intent to award sole source contracts for this purpose.

Atlanta's charter requires that the chief procurement officer report information on contracts to the Council president and members monthly, including (1) The titles of all requests for proposals and the method of source selections to be used; (2) All contracts authorized by the council, the method of source selection used and the total dollar amount; (3) All contracts authorized by the chief procurement officer pursuant to subsection 2-1140(2), the method of source selection, as well as all emergency procurements pursuant to section 2-1192. (4) All change orders of contract modifications authorized by the council, the dollar amount, and the reason; (5) All change orders or contract modifications authorized by the chief procurement officer pursuant to subsection 2-1292(a)(1), the dollar amount, and the reason; (6) An explanation of any changes, and the costs involved, in the scope of services made between the time an award recommendation for a contract is made and the time that a resolution authorizing the contract is sent to the council for adoption.

Baltimore County's charter requires that whenever a contract is awarded by a process other than competitive bidding, a copy of the contract be given to the County Council, where it is formally announced at the next session and recorded in the Council's permanent minutes. Philadelphia requires quarterly reporting of non-competitively bid contracts to the City Council.

New York City's code prescribes an online database, the operation of which is reviewed by the mayor and the comptroller to ensure that the information required by the subdivision of the Code is maintained in a form that will enable each of them, and agencies, New York city affiliated agencies, elected officials and the council, to utilize the information in the performance of their duties. The data base contains information for every franchise and concession and every contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, entered into by an agency, New York city affiliated agency, elected official or the council, including, but not limited to: (1) the name, address, and federal taxpayer's identification number of the contractor, franchisee or concessionaire where available in accordance with applicable law; (2) the dollar amount of each contract including original maximum and revised maximum expenditure authorized, current encumbrance and actual expenditures; (3) the type of goods or services to be provided pursuant to the contract; (4) the term of the contract, or in the case of a construction contract the starting and scheduled completion date of the contract and the date final payment is authorized; (5) the agency, New York city affiliated agency, elected official or the council that awarded the contract, franchise or concession and the contract registration number, if any, assigned by the comptroller; (6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure, and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the

general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder; and (7) the date of any public hearing held with respect to the contract and the date and agenda number of action taken with respect to a concession or franchise by the franchise and concession review committee; and [(8) Reserved] (9) the contract budget category to which the contract is assigned, where applicable.

In Philadelphia, procurement reform in 2005 included a requirement that any City Agency that seeks to enter into a Non-Competitively Bid Contract publish on the City's official website and file with the Procurement Commissioner, the Finance Director and the Commerce Director a notice of the availability of such contracting opportunity, and award such contract only to a party that completes an application form supplied by such City Agency, which application form shall contain all disclosure forms required [particularly with regard to campaign contributions made by the vendor, related companies, and family members]. The required notices must appear on the City's official website for at least fourteen days before the time by which application forms must be filed....The required notices must be available for public inspection in such registries at least fourteen days before the time by which application forms must be filed. After the City Agency has selected the Applicant with which it intends to contract, the City Agency must publish a notice on the City's official website setting forth the names of all Applicants, the Applicant to which the contract will be awarded, and the basis for the award, including a statement as to whether the Applicant to be awarded the contract was the lowest bidder and if not, why the applications of all lower bidders were rejected. Such notice must appear on the City's website for at least one week before the contract is executed. (Philadelphia Code, § 17-1403)

A "real time" system for reporting procurements that do not go to the Board of Estimates under a raised threshold may not provide the ringside seat of the weekly Board meeting, but can keep the public window into the process open.

*Baltimore Efficiency and Economy Foundation recommends: Removal of specific dollar amounts requiring Board of Estimates approval from the Charter. Substitution of a provision for democratically set thresholds for approvals of transactions. Initiation of close-to-real time electronic posting of contracts below the threshold that have been awarded. Electronic posting of sole source contracts with a 48 hour time period for competitors to file qualifications before the contract is executed.*

### **Access and equity**

Previous research done by this author for the Annie E. Casey Foundation and Associated Black Charities found that many of Baltimore's African American-owned companies view government programs as a "license to subcontract," both because of the way they are regarded by prime contractors, and the structure/size of the procurements themselves. The smallest contracts are not only most costly to the government, but also least profitable to small companies, which experience comparable transaction costs. Subcontracts on these small contracts are even less appealing.

Most of the localities examined are relying increasingly on electronic means of advertising bidding opportunities, even though most of them had not yet taken the next step to accept bids on line. Like Baltimore City's CitiBuy, these systems also make it possible for vendors who register to be made aware regularly of relevant opportunities, rather than needing to continuously check the bid board.

Security requirements also affect access to government contracts for small businesses. Most of the localities examined provide their procurement and legal specialists the opportunity to flexibly design bid and performance security requirements, in several cases specifically advantaging their local companies.

*Baltimore Efficiency and Economy Foundation recommends: Revision of charter to require posting in two places, one of which is a general circulation newspaper and the other an electronic posting on the City's website. Removal of specific dollar amounts requiring Board of Estimates approval from the Charter. Substitution of a provision for democratically setting thresholds for approvals of transactions. Approval by the City Council of higher thresholds for formal competitive bidding. Initiation by the Department of Finance of close-to-real time electronic posting of contracts below the threshold that have been awarded. Electronic posting of sole source contracts with a 48 hour time period for competitors to file qualifications before the contract is executed. Performance bond requirements removed from the Charter and established by the Department of Finance, with specific authorization of flexible requirements for local, young, minority- and women-owned companies.*

### **Mayor/Council**

In a strong-mayor system such as Baltimore's, where the Mayor has by charter the majority of the appointees to the Board of Estimates and in practice a working majority of supporters in the City Council, it is difficult to ensure that the City Council has a voice in any changes proposed to the procurement process. One way to accomplish this objective would be to require a two-thirds majority affirmative vote of the Council to change procurement thresholds, if they were removed from the Charter.

*Baltimore Efficiency and Economy Foundation recommends: Removal of specific dollar amounts requiring Board of Estimates approval from the Charter. Substitution of a provision for legislatively-set thresholds for approvals of transactions, requiring a two-thirds vote of the City Council*

## **I. Purpose of the Study and Introduction**

The Johns Hopkins Institute for Policy Studies was engaged by the Baltimore Efficiency and Economy Foundation to comparatively analyze the procurement approval process in Baltimore City, other home rule Maryland counties, and selected cities around the country. The cities chosen are those that are similar to Baltimore in demographics, political and economic history, and/or government structure. Before 1990, New York City was the only other large U.S. city to have a Board of Estimates-like body that had authority over all contracts. New York City's 1990 Charter Revision eliminated the New York City Board of Estimate after the U.S. Supreme Court ruled it unconstitutional because it lacked proportional representation of the boroughs; procurement responsibilities of the Board of Estimate were delegated to the Mayor and the City Council, respectively.

### **Scope of the study**

The scope of this study was limited – it did not involve an exhaustive analysis of procurement management in Baltimore City by the National Institute of Governmental Purchasing, Inc. in 2001. Rather it was designed to provide the facts about:

- What are the charter provisions governing procurement in each of the localities, including approval authorities and advertising and security requirements?
- What are monetary limits are codified in local charters? What monetary limits have been adopted by legislative bodies?
- How are the charter provisions changed, including the role of the legislative bodies?

### **Issues**

The study grew out of the debate around a 2007 proposal to make adjustments in the Baltimore City charter that address all three of the issues listed above. Concerns included: efficiency, transparency of city government actions, access and equity (for vendors, particularly minority-owned, women-owned, and small companies), and respective roles of the Mayor and City Council.

### **Situation today**

As described more fully in Section II of the report, the Baltimore City Charter sets the minimum threshold value for procurements that must be taken to the Board of Estimates for approval (currently \$5,000 and greater) and provides that the City Council sets by ordinance the minimum threshold value for procurements that must be formally bid (currently \$25,000 and greater, last raised in 1986). City agencies can directly purchase goods and services up to \$1,000 in value.

## FY 2007 Baltimore City Procurements

Type	Number of purchases		Total value (million)	
Direct purchase order (by agencies, generally <\$1000)*	59,000		\$ 19.00	
Procurement card (by agencies, generally <\$1000)	4,550		\$ 1.37	
Type/Range	Number of purchases	% of purchases handled by BOP	Total value (million)	% of grand total of value
Under \$5,000 (BOP processing of agency requisitions and purchase orders)	3,284	56%	\$ 8.69	3.69%
\$5,000 to \$25,000 (BOP management of competitive informal bids)	1,604	27%	\$ 18.96	8.04%
Over \$25,000 (open competition – BOP management of competitive formal bids)	545	9%	\$ 89.17	37.83%
Over \$25,000 (sole source or selected source – BOP management of requirements)	402	7%	\$118.87	50.43%
<b>Total</b>	<b>69,385</b>		<b>\$256.06</b>	
<b>Total handled by BOP</b>	<b>5,835</b>	<b>8%</b>	<b>\$235.69</b>	<b>92.04%</b>

*\*Estimate by Department of Finance*

*Source: Department of Finance*

The total number of procurements has risen sharply recently. In FY04, the Bureau of Purchases (BOP) handled 4,174 purchasing requisitions submitted by agencies; in FY07, 5,835 purchases were made by BOP, a 40 percent increase over four years. While the majority of purchases are made by agencies directly, BOP manages over 90% of the value of procurements made.

The Charter also requires that a performance bond for multiple-year awards must be in the amount of the total value of the multiple year term.

The Charter requires advertising for formal bids – publication at least twice in two or more daily newspapers published in Baltimore City.

## II. Summary of the Procurement Process in Baltimore City

Competitive Bid Threshold (formal)	\$25,000
Using Agency Purchase Threshold	Less than \$1,000 in commitments to any one vendor in one year for procurement card purchases and direct purchase orders
Purchasing Director Threshold	No limit, with approval of Board of Estimates
Approval Authority and Process	<ul style="list-style-type: none"> <li>• Purchases less than \$1,000 can be made by agencies directly</li> <li>• Purchases <math>\geq</math>\$1,000 and <math>&lt;</math>\$5,000 are made by the Bureau of Purchasing in the Finance Department on behalf of the requesting agencies.</li> <li>• Informal bids between \$5,000 and \$25,000 are managed by the Bureau of Purchasing using formal bids, informal bids, requirements contracts, sole source, emergency, or selected source methods, and must be approved by the Board of Estimates</li> <li>• Purchases above \$25,000 must be conducted by formal competition and approved by the Board of Estimates.</li> <li>• Sole source and selected source procurements above \$25,000 must be approved by the Board of Estimates</li> </ul>
Professional and Consultant Services	All professional services contracted for by the City shall be engaged in the manner prescribed by resolution of the Board of Estimates ( <u>Charter</u> , Article VI, §11.c). Agencies have the flexibility to acquire professional services, but contracts must be approved and executed by the Board of Estimates.
Process for Change	<p>Baltimore City and all Maryland home rule counties are bound by the Maryland Constitution provisions governing the amendment of charters: MD CONST Art. 11-A, § 4, Article XI-A. Local Legislation, § 5. Charter amendments.</p> <p>Amendment of a locality's charter requires an ordinance of the legislative body or a petition signed by 20% of registered voters, approved by a majority of the voters at the next regularly scheduled election.</p> <p>City Council can change by ordinance the threshold for formal bidding, advertising (<u>Charter</u>, Article VI. §11.b.ii)</p>
Last Changes	1986: threshold for requirement of Board of Estimates approval raised by charter amendment from \$2,000 to \$5,000
Relevant Charter Provisions ( <u>Highlights added</u> )	<p><b>ARTICLE VI. Board of Estimates</b></p> <p><b>§11. Procurement</b></p> <p>(a) <i>Board of Estimates responsible.</i></p> <p>The Board of Estimates shall be responsible for awarding contracts and supervising all purchasing by the City as provided in this section and elsewhere in the Charter.</p> <p>(b) <i>Contracts of \$25,000 or more.</i></p> <p>In contracting for any public work, or the purchase of any supplies (unless otherwise provided by ordinance for foodstuffs and related perishables), materials, equipment, or services other than professional services, involving an expenditure of twenty-five thousand dollars or more, for the City or by any municipal agency, advertisements for proposals shall first be published at least twice in two or more daily newspapers published in Baltimore City unless otherwise provided by the Charter. The first publication shall be made not less than ten nor more than ninety days prior to the day set</p>

	<p>for opening the bids.</p> <p>(ii) The City Council, by ordinance adopted by a majority of the members, may increase or decrease the dollar amounts provided in this subsection (b) for contracts requiring published advertisements.</p> <p>(iii) The contract for any public work or the purchase of any supplies (unless otherwise provided by ordinance for foodstuffs and related perishables), materials, equipment, or services other than professional services, involving an <u>expenditure of five thousand dollars</u> or more shall be made by the Board of Estimates in the manner provided in subsection (g).</p> <p>(c) <i>Professional services.</i> All professional services contracted for by the City shall be engaged in the manner prescribed by resolution of the Board of Estimates.</p> <p>(d) <i>Emergencies, etc.</i> (i) When any supplies, materials, equipment, services, or public works are of such a nature that no advantage will result in seeking, or it is not practicable to obtain, competitive bids, or when the need for such supplies, materials, equipment, services, or public works is of an emergency nature, and the using agency certifies this in writing to the Board of Estimates, with written notice to the Department of Finance, the provisions of subsection (b) may be dispensed with, but such purchase shall not be made, nor shall the City incur any obligation therefor, until approved by the Board of Estimates after considering the recommendation of the Department of Finance.</p> <p>(ii) In the event of an emergency of such a nature that the public welfare would be adversely affected by awaiting the approval of the Board of Estimates, the Department of Finance, upon application by the head of the municipal agency involved, may proceed to obtain the supplies, materials, equipment, services, or public works required without reference to the provisions of subsection (b); a full report of any such action shall be promptly submitted to the Board of Estimates.</p> <p>(e) <i>Contracts of \$5,000 - \$25,000.</i> All purchases of services other than professional services, of property other than real estate or interests therein (except as may be otherwise provided by ordinance for foodstuffs and related perishables), and all other contracts involving an expenditure of more than \$5,000 and less than \$25,000 except those awarded by the Board of Estimates pursuant to the provisions of subsection (g), made by any municipal agency, in addition to compliance with other applicable provisions of the Charter, shall be submitted to the Board of Estimates for its approval and shall be binding upon the City only when so approved. The Board of Estimates may adopt rules and regulations governing the procedures and requirements to be followed by any municipal agency in making purchases or other contracts involving an expenditure of less than \$25,000.</p>
Advertising Requirements	For contracts over \$25,000, advertising for proposals shall first be published at least twice in two or more daily newspapers published in Baltimore City unless otherwise provided by the Charter. The first publication shall be made not less than ten nor more than ninety days prior to the day set for opening the bids. ( <u>Charter</u> Article VI. §11.b.i)
Security Requirements – bids	All bids must be accompanied by a check or bid bond in an amount prescribed by ordinance, bid specifications, or order or regulation of the using agency ( <u>Charter</u> Article VI, §11.g.2.i and ii). Bid bond is not required if the bid is equal to or less than the amount authorized by ordinance. ( <u>Charter</u> Article VI, §11.h.i)
Security Requirements – performance	Performance security is required, or certification that the successful bidder meets the requirements under the City’s self-insurance program for performance coverage. ( <u>Charter</u> Article VI, §11.G.3.i) Performance bond are not required if the bid is equal to or less than the amount authorized by ordinance. If and when the amount exceeds the amount authorized by ordinance, the contractor is required to post a performance bond of 100% of the excess over the authorized amount ( <u>Charter</u> Article VI, §11.h.ii, iii)

Interviewee(s)	Edward Gallagher, Director of Finance and Helene Grady, Deputy Director of Finance 410.396.4940 Cecil Moore and Joe Mazza, Bureau of Purchasing 410.396.5700
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### III. Summaries of Procurement Processes in Other Maryland Counties

#### Anne Arundel County

Competitive Bid Threshold (formal)	\$25,000
Using Agency Purchase Threshold	\$5,000
Purchasing Director Threshold	\$ Unlimited
Approval Authority and Process	<ul style="list-style-type: none"> <li>• Purchases up to \$5,000 can be made by using agencies</li> <li>• Informal purchases between \$5,000- 25,000 must be approved by the purchasing department</li> <li>• Purchases above \$25,000 must be handled by competitive sealed bids or proposals, approved by the department of purchasing.</li> <li>• Controller must certify funds available, and County Attorney must approve for form and legal sufficiency.</li> </ul>
Professional and Consultant Services	Can be let without competitive bidding. ( <u>Charter</u> , Article IX, §906).
Process for Change	<p><u>Charter</u> gave the County Council to raise the competitive bid threshold up to \$25,000; further increase would require charter amendment.</p> <p>Baltimore City and all Maryland home rule counties are bound by the Maryland Constitution provisions governing the amendment of charters: MD CONST Art. 11-A, § 4, Article XI-A. Local Legislation, § 5. Charter amendments.</p> <p>Amendment of a locality's charter requires an ordinance of the legislative body or a petition signed by 20% of registered voters, approved by a majority of the voters at the next regularly scheduled election.</p>
Recent Changes	<p>July 2005: Agency procurement threshold raised from \$1000 to \$5000</p> <p>July 2005: Competitive formal bid threshold raised from \$10,000 to \$25,000</p>
Relevant Charter Provisions (Emphasis added)	<p><b>ARTICLE VII. BUDGETARY AND FISCAL PROCEDURES</b></p> <p><b>Sec. 715 Appropriation control and certification of funds.</b></p> <p>(b) (1) Except as otherwise authorized under paragraph (2) of this subsection and under Section <a href="#">718(g)</a> of this Charter, an office, department, board, commission, or other agency of the County government may not make any payment over One Hundred Dollars (\$100) or incur any obligation or liability over One Hundred Dollars (\$100) unless the Controller certifies that the funds for the designated purpose are available.</p> <p>(2) The County Council may increase the limit set in paragraph (1) of this subsection for uncertified expenditures and then decrease the limit by ordinance to any amount not lower than that set in paragraph (1).</p>
	<p><b>ARTICLE IX CENTRALIZED PURCHASING</b></p> <p><b>Sec. 901. Responsibility for purchasing.</b></p> <p>The Central Services Officer shall be responsible to the Chief Administrative Officer for the execution of the County purchasing policies established in this Article.</p>

	<p><b>Sec. 902. County purchasing policies and practices</b>  The Central Services Officer shall appoint a County Purchasing Agent in accordance with the provisions of <a href="#">Article VIII</a> who shall have the following purchasing functions which he may delegate to Deputy Purchasing Agents in his office and under his supervision:  (f) The establishment, with the approval of his superiors and by ordinance of the County Council, of reasonable rules and regulations governing emergency purchases and contracts and those involving material, equipment or services of an unusual or noncompetitive nature which shall not be subject to competitive bidding.</p>
	<p><b>Sec. 904. Competitive bidding.</b>  (a) Any single purchase or contract under the jurisdiction of the County Purchasing Agent and <u>involving an expenditure of more than Three Thousand Dollars (\$3,000), except for purchases for which the County Council has set a higher minimum requirement under Section 911</u> of this Article, emergency purchases, and those involving material and equipment of a non-competitive nature, as may be defined and governed by the regulations adopted under Section <a href="#">902(f)</a> of this Article, <u>shall be made from or let by sealed bids or proposals</u>. The sealed bids and proposals shall be publicly opened after public notice for the period and in the manner that the Purchasing Agent or his authorized deputy determines, however, a purchase or contract may not be made under this section for at least one week after the public opening of bids. The purchases and contracts shall be made from or awarded to the lowest responsible bidder who shall give security or bond for the performance of his contract as determined by the Purchasing Agent or his deputy. In all cases, the County shall reserve the right to reject any and all bids.  (b) All construction, maintenance and repair work shall be subject to the requirements of competitive bidding provided in this section, unless the work is to be done directly by the County through the use of its own laboring force. All materials and supplies used by the County laboring force shall be purchased in accordance with the provisions of this Article.  (d) No sale, contract, or purchase shall be subdivided to avoid the requirements of this section.  (Bill No. 73-82)</p>
	<p><b>Sec. 906 Service contracts.</b>  Contracts for professional services and for services for which the rate or price is fixed by a public authority authorized by law to fix rates or prices, shall be let without resource [resort] to competitive bidding</p>
	<p><b>Sec. 911. Furthering legislation</b>  <u>The County Council shall enact furthering legislation</u>, not inconsistent with the provisions of this Charter or with the public general laws of this State, to implement the purchasing policies herein established. Such legislation may regulate the practices of the County Purchasing Agent and other officers, agents and employees of the County in regard to the issuance of inquiries, the receipt of bids, the placement of orders and other matters relating to the making of purchases and the award of contracts. Such legislation may prescribe special procedures governing the letting of bids and the award of contracts for the construction of roads, bridges, streets, buildings and those relating to water, sewer and storm water facilities, and <u>may increase the minimum dollar requirement for competitive bidding with respect to such contracts from Three Thousand Dollars (\$3,000.00) as provided in Section 904 to a figure up to, but not greater than Twenty-Five Thousand Dollars (\$25,000). All such legislation shall be subject to amendment from time to time by the County Council.</u>  (Bill No. 93-80; Bill No. 73-82; Res. No. 19-04)</p>
Advertising	Charter provides that the Purchasing Agent or his authorized deputy shall determine the

requirements	time period and manner of public notice of procurement actions ( <u>Charter</u> Article __, §904.a)
Security Requirements – bids	Charter does not address
Security Requirements – performance	Security or bond for performance of a contract is determined by the Purchasing Agent ( <u>Charter</u> , Article IX, §904.a)
Interviewee(s)	Jennifer Helmicke, P Card Administrator 410.222.7668

## Baltimore County

Competitive Bid Threshold (formal)	\$25,000
Using Agency Purchase Threshold	\$1,000
Purchasing Director Threshold	Over \$25,000 must be approved by either the County Executive or the County Council
Approval Authority and Process	<ul style="list-style-type: none"> <li>• Purchases up to \$1,000 (small purchase) can be made by using agencies, frequently with p-cards</li> <li>• Purchases between \$1,001 and \$5,000 are “open market purchases” by Purchasing Division buyers who identify vendors from records, or telephone or email quotes, and make purchases with p-cards</li> <li>• Purchases between \$5,001 and \$25,000 are RFQ/Informal Bids (minimum of three), which are solicited using the County’s Current Solicitations webpage. Purchase orders are issued, and vendors submit invoices to the Office of Budget and Finance (disbursements section) for payment.</li> <li>• Purchases above \$25,000 must be made by formal written sealed bids or proposals, solicited using the County’s Current Solicitations webpage. Purchase orders are issued, and vendors submit invoices to the Office of Budget and Finance (disbursements section) for payment.</li> </ul>
Professional and Consultant Services	County Council approval required for service contracts for a term exceeding two years or exceeding \$25,000 in value for one year. ( <a href="#">Procurement Overview for Vendors</a> )
Process for Change	<p><u>Charter</u> provides that the County Council can set the threshold for competitive bidding, and specifies no ceiling. (Article IX, §906).</p> <p>Baltimore City and all Maryland home rule counties are bound by the Maryland Constitution provisions governing the amendment of charters: MD CONST Art. 11-A, § 4, Article XI-A. Local Legislation, § 5. Charter amendments.</p> <p>Amendment of a locality’s charter requires an ordinance of the legislative body or a petition signed by 20% of registered voters, approved by a majority of the voters at the next regularly scheduled election.</p>
Recent Changes (neither involved charter changes)	<p>2003: The purchasing manual was amended to raise the p-card limit for Purchasing Division buyers to \$10,000 per transaction, with notification of the County Council.</p> <p>2005: Utility was redefined from a service to a commodity by notification to the County Council.</p>
Relevant Charter Provisions ( <u>Highlights added</u> )	<p><b>ARTICLE IX. CENTRALIZED PURCHASING</b></p> <p><b>Sec. 901. Responsibility for purchasing.</b></p> <p>There shall be a county purchasing agent who shall be responsible to the county administrative officer for the enforcement of the county purchasing policies established in this article.(Bill No. 87, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 129, 1990, § 4; approved by voters Nov. 6, 1990; effective Dec. 7, 1990)</p>
	<p><b>Sec. 902. County purchasing policies and practices.</b></p> <p>Unless changed pursuant to section 502 of this Charter, the director of budget and finance shall be the county purchasing agent and shall have the following purchasing functions which he may delegate to a deputy purchasing agent in his office and under</p>

	<p>his supervision or to another county official if authorized by legislative act of the county council:</p> <p>(f) <u>The establishment, with the approval of the county administrative officer and by legislative act of the county council, of reasonable rules and regulations governing the circumstances under which the use of competitive bidding is not appropriate or feasible.</u> When such bidding is not appropriate, a contract shall be awarded only by competitive negotiations, unless such negotiations are not feasible. When neither competitive bidding nor competitive negotiations are feasible, contracts may be awarded by noncompetitive negotiations. <u>Whenever a contract is awarded by a process other than competitive bidding, a copy of the contract shall be given to the county council and, at the next legislation session-day following the award of the contract, the secretary to the county council shall formally announce to the council the nature of the contract and the parties to the contract. The announcement shall be recorded in the minutes of the County Council, a permanent record, which shall be available for inspection by the public.</u>(Bill No. 87, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 117, 1982, § 1; approved by voters Nov. 2, 1982; effective Dec. 3, 1982; Bill No. 102-96, § 1; approved by voters Nov. 5, 1996; effective Dec. 5, 1996)</p>
	<p><b>Sec. 904. Competitive bidding.</b></p> <p><u>Any single purchase or contract under the jurisdiction of the county purchasing agent and involving an expenditure of more than seven thousand five hundred dollars or such amount as may be set by legislative act of the county council, except only one for which the use of competitive bidding is not appropriate or feasible as may be defined and governed by the regulations mentioned in section 902(f) hereof, shall be made from or let by sealed bids or proposals</u> publicly opened after public notice for such period and in such manner as the purchasing agent or his authorized deputy shall determine. Such purchases and contracts shall be made from or awarded to the lowest responsive and responsible bidder who shall give security or bond for the performance of his contract as determined by the purchasing agent or his deputy; provided, however, that no such purchase or contract shall be made or awarded within a period of three business days from the date of the public openings of bids. In all cases, the county shall reserve the right to reject any and all bids. All construction, maintenance and repair work shall be subject to the requirements of competitive bidding provided in this section, unless such work is to be done directly by the county through the use of its own laboring force. All materials and supplies used by the county laboring force shall be purchased in accordance with the provisions of this article.(Bill No. 87, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 117, 1982, § 1; approved by voters Nov. 2, 1982; effective Dec. 3, 1982; Bill No. 129, 1990, § 4; approved by voters Nov. 6, 1990; effective Dec. 7, 1990)</p>
	<p><b>Sec. 906. Furthering legislation.</b></p> <p>At its first annual legislative session, <u>the county council shall enact furthering legislation,</u> not inconsistent with the provisions of this Charter or with the public general laws of this state, to implement the purchasing policies herein established. Such legislation may regulate the practices of the county purchasing agent and other officers, agents and employees of the county in regard to the issuance of inquiries, the instructions to bidders, the receipt of bids, the placement of orders and other matters relating to the making of purchases and the award of contracts. <u>Such legislation</u> may prescribe special procedures governing the letting of bids and the award of contracts for the construction of roads, bridges, streets, buildings and those relating to water, sewer and storm water facilities, and <u>may increase the minimum dollars requirement for competitive bidding. All such legislation shall be subject to amendment from time to time by the county council.</u>(Bill No. 117, 1982, § 1) (Approved by voters Nov. 2, 1982; effective Dec. 3, 1982)</p>

Advertising Requirements	Charter does not address.
Security Requirements – bids	Charter does not address.
Security Requirements – performance	Purchasing agent sets the performance bond requirement ( <u>Charter</u> , Article IX, §904)
Interviewee(s)	Deborah L. Meehan, Chief, Purchasing Services, Purchasing Division, Office of Budget and Finance, <a href="mailto:dmeehane@baltimorecountymd.gov">dmeehane@baltimorecountymd.gov</a> 410.887.4637

## Howard County

Competitive Bid Threshold (formal)	\$30,000
Using Agency Purchase Threshold	\$5,000
Purchasing Director Threshold	\$ Unlimited
Other threshold	Competitive bidding requirements can be waived for purchases less than \$10,000
Approval Authority and Process	<ul style="list-style-type: none"> <li>• Purchases up to \$5,000 can be made by agencies on p-cards (<u>Charter</u> §619 – amount to be set by County Council)</li> <li>• Howard County Purchasing Agent may waive competitive bidding requirements for small purchases and sales involving less than \$10,000 (Code §4.103.p)</li> <li>• Purchases between \$5,001 and \$29,999 (“small purchases”) are made competitively by the Office of Purchasing through informal bidding processes (minimum three written quotes)</li> <li>• Formal competitive bidding is required for purchases of \$30,000 or more.</li> <li>• Contracts must be certified by the Director of Finance for funds availability and by the County Solicitor for form and legality.</li> </ul>
Professional and Consultant Services	Handled by competitive negotiation with vendors that meet requirements of the qualification board
Process for Change	<p>Charter grants to the County Council (upon recommendations received from the County Executive if received) the power to enact furthering legislation to implement the purchasing policies established in the charter. (<u>Charter</u> §808).</p> <p>Baltimore City and all Maryland home rule counties are bound by the Maryland Constitution provisions governing the amendment of charters: MD CONST Art. 11-A, § 4, Article XI-A. Local Legislation, § 5. Charter amendments.</p> <p>Amendment of a locality’s charter requires an ordinance of the legislative body or a petition signed by 20% of registered voters, approved by a majority of the voters at the next regularly scheduled election.</p>
Recent Changes	4/9/08: Initiation of implementation of new purchasing code adopted by the County Council; using agency purchasing threshold increased from \$1000 to \$5000
Relevant Charter Provisions ( <u>Highlights added</u> )	<p><b>ARTICLE VI. APPROPRIATION CONTROL AND CERTIFICATION OF FUNDS</b></p> <p><b>Section 612. Appropriation control and certification of funds.</b></p> <p>(a) No office, department, institution, board, commission or other agency of the County government shall during any fiscal year expend, or contract to expend, any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, for any purpose in excess of the amounts appropriated or allotted for the same general classification of expenditure in the budget for such fiscal year, or in any supplemental appropriation as hereinabove provided; and no such payment shall be made nor any obligation or liability incurred, <u>except for small purchases in an amount to be established from time to time by ordinance</u> unless the Director of Finance shall first certify that the funds for the designated purpose are available.</p>

	<p><b>ARTICLE VIII. CENTRALIZED PURCHASING</b></p> <p><b>Section 801. Responsibility for purchasing.</b> The Chief Administrative Officer shall be responsible to the Executive for the execution of the County purchasing policies established in this Article.</p>
	<p><b>Section 802. County purchasing policies and practices.</b> The Chief Administrative Officer shall be the County Purchasing Agent and shall have the following purchasing functions which he or she may delegate to a Deputy Purchasing Agent in his or her office and under his or her supervision:</p> <p>(a) The making of all purchases, leases and contracts for all public works and services, and for all supplies, material and equipment for all offices, departments, institutions, boards, commissions and other agencies of the County government for which payment is to be made out of County funds.</p> <p>(f) The establishment, with the approval of the Executive and by legislative act of the Council, of reasonable rules and regulations governing emergency purchases and contracts and those involving material, equipment or services of an unusual or noncompetitive nature which shall not be subject to competitive bidding.</p>
	<p><b>Section 804. Competitive bidding.</b> The Purchasing Agent shall employ competitive bidding in accordance with policies established by the Council.</p>
	<p><b>Section 808. Furthering legislation.</b> The Council, upon recommendations received from the Executive, or if he or she fails to do so, shall enact furthering legislation, not inconsistent with the provisions of this Charter or with the public general laws of this State, to implement the purchasing policies herein established. Such legislation shall provide for regulating the practices of the County Purchasing Agent and other officers, agents and employees of the County in regard to the issuance of inquiries, the receipt of bids; the placement of orders and other matters relating to the making of purchases and the award of contracts. Such legislation shall also prescribe procedures and establish minimum dollar amounts for competitive bidding.</p>
Advertising Requirements	Charter does not address
Security Requirements – bids	Charter does not address
Security Requirements – performance	Charter does not address
Interviewee(s)	Darla Herbold, Purchasing Administrator, Office of Purchasing, Department of County Administration, dherbold@howardcountymd.gov 410.313.6370



## Montgomery County

Competitive Bid Threshold (formal)	\$25,000
Using Agency Purchase Threshold	\$5,000
Purchasing Director Threshold	\$ Unlimited
Approval Authority and Process	<ul style="list-style-type: none"> <li>• Thresholds for informal solicitation are established by regulation.</li> <li>• Non-competitive awards over a threshold set by regulation require the approval of the Chief Administrative Officer</li> <li>• Purchases up to \$5,000 can be made directly by agencies</li> <li>• Purchases between \$5,000 and \$25,000 must be undertaken by the Office of Procurement and may use informal methods of source selection, and a minimum of five bidders.</li> <li>• Purchases over \$25,000 require formal competitive bidding.</li> <li>• Unlimited purchases are permitted under requirements contracts, which must be executed by the Purchasing Director</li> </ul>
Professional and Consultant Services	Generally awarded using competitive sealed proposals, using a qualification and selection committee to rank the proposals; same thresholds apply
Process for Change	Baltimore City and all Maryland home rule counties are bound by the Maryland Constitution provisions governing the amendment of charters: MD CONST Art. 11-A, § 4, Article XI-A. Local Legislation, § 5. Charter amendments. Amendment of a locality's charter requires an ordinance of the legislative body or a petition signed by 20% of registered voters, approved by a majority of the voters at the next regularly scheduled election.
Recent Changes (no change to Charter)	1995-98: Agency threshold raised from \$3000 to \$5000.
Relevant Charter Provisions ( <u>Highlights added</u> )	<p><b>ARTICLE 3. FINANCE</b></p> <p><b>Sec. 313. Purchasing.</b> The Council shall prescribe by law a centralized system of purchasing and contracting for all goods and services used by the County. The centralized purchasing system shall be administered under the professional supervision of the Chief Administrative Officer subject to the direction of the County Executive.</p>
	<p><b>Sec. 314. Competitive Procurement.</b> The Council shall prescribe by law for competitive procurement for purchases by or contracts with the County in excess of an amount or amounts established by law.</p>
	<p><b>Sec. 507. Amendment.</b> This Charter may be amended in the manner provided in Section 5 of Article XI-A of the Constitution of Maryland.</p>

Advertising Requirements	Charter does not address. Code §11B-17A requires posting of planned purchases of goods, services, or construction valued at \$5,000 to \$25,000 on the County's website for five business days before a purchase is made.
Security Requirements – bids	Charter does not address
Security Requirements – performance	Charter does not address
Interviewee(s)	Pam Jones, Manager, Operations    pam.jones@montgomerycountymd.gov 240.777.990

## Prince George's County

Competitive Bid Threshold (formal)	\$ 30,000
Using Agency Purchase Threshold	\$ 5,000
Purchasing Director Threshold	No limit (except multi-year)
Approval Authority and Process Chart	<ul style="list-style-type: none"> <li>• Purchases of less than \$5,000 per vendor per year can be made by agencies directly</li> <li>• Only a few employees are authorized to use p-cards; transactions are approved by the Procurement Administrator (part of the Office of Central Services)</li> <li>• Informal bids and RFQs for less than \$500 can be carried out by telephone, writing, fax, electronic communications</li> <li>• Purchases between \$5,000 and \$30,000 ("small purchases," typically requiring three bids) are governed by Procurement Division regulations, can be carried out by using agencies, and must be approved by the Contract Administration &amp; Procurement Division</li> <li>• Purchases above \$30,000 must be conducted by competitive sealed bidding, with exceptions (<u>Charter</u> provides that this threshold is to be set by legislative act of the County Council)</li> <li>• The ability to manage purchases above \$30,000 may be delegated to using agencies by the Procurement Administrator.</li> <li>• Director of Finance must certify funds availability for contracts over \$1,000 (<u>Charter</u> Article VIII, §819, <u>Code</u> §10A-103.c)</li> <li>• Charter sets \$100,000 limit per contract for multi-year contracts, and aggregate limit of \$500,000 for multi-year contracts, subject to revision by act of the County Council. All multi-year contracts require County Council approval (<u>Charter</u> Article VIII, §819)</li> </ul>
Professional and Consultant Services	<ul style="list-style-type: none"> <li>• Charter does not address</li> <li>• Typically handled through competitive sealed proposals, using Proposal Analysis Group, which negotiates with the one of the top-ranked three proposers that makes the most advantageous best and final offer.</li> </ul>
Process for Change	<ul style="list-style-type: none"> <li>• Baltimore City and all Maryland home rule counties are bound by the Maryland Constitution provisions governing the amendment of charters: MD CONST Art. 11-A, § 4, Article XI-A. Local Legislation, § 5. Charter amendments. Amendment of a locality's charter requires an ordinance of the legislative body or a petition signed by 20% of registered voters, approved by a majority of the voters at the next regularly scheduled election.</li> <li>• County Council can set the threshold for formal competitive bidding (<u>Charter</u> Article 6, §603)</li> </ul>
Recent Changes	County Council approved an increase in the threshold for formal competitive bidding from \$15,000 to \$30,000 in 2005.
Relevant Charter Provisions	<p><b>ARTICLE IV. EXECUTIVE BRANCH</b>  <b>Section 402. Executive Power and Duties.</b>  All executive power vested in Prince George's County by the Constitution and laws of Maryland and this Charter shall be vested in the County Executive who shall be the chief</p>

	<p>executive officer of the County and who shall faithfully execute the laws. His powers, duties, and responsibilities shall include, but shall not be limited to: <u>(8) signing or causing to be signed on the County's behalf all deeds, contracts and other instruments.</u></p>
	<p><b>Section 602. Duties of the County Purchasing Agent.</b>  The duties of the County Purchasing Agent shall include responsibility for: (1) the making of all purchases and the contracting for all public work and services for which payment is to be made out of County funds; (2) the establishment, after consultation with the appropriate County officials, of specifications and standards for all supplies, materials and equipment, and the inspection of all deliveries to insure compliance with such specifications and standards; (3) the establishment and maintenance of a system of requisitions and receipts covering the furnishing of supplies, materials, and equipment to the various using agencies; (4) <u>the preparation for legislative action thereon by the Council of reasonable rules and regulations governing emergency purchases, contracts, and services or material and equipment of an unusual or noncompetitive nature which shall not be subject to competitive bidding</u>; (5) the sale or other disposition of surplus, old, and waste supplies, materials, and equipment or the transfer of same between using agencies; and (6) the conduct of programs involving joint or cooperative purchasing with other public jurisdictions.  (Amended, CB-92-1974, ratified Nov. 5, 1974, Amended, CB-68-2002, ratified Nov. 5, 2002)</p>
	<p><b>Section 603. Competitive Bidding.</b>  <u>Any single purchase or contract under the jurisdiction of the County Purchasing Agent and involving an expenditure in excess of such amount(s) as may be established by legislative act of the County Council,</u> except emergency purchases and those involving services or material and equipment of a noncompetitive nature as may be defined and governed by the rules and regulations mentioned in Section 602 of this Charter, <u>shall be made from or let by sealed bids or proposals publicly opened after public notice for such period and in such manner as the County Purchasing Agent or his authorized deputy shall determine.</u> Such purchases and contracts shall be made from or awarded to the responsive and responsible bid that is most favorable to the County with respect to technical requirements and costs. A security or bond for the performance of work as determined by the County's Purchasing Agent may be required for purchases and contracts. No such purchase or contract shall be made or awarded within a period of one week from the date of the public opening of bids. In all cases, the County shall reserve the right to reject any and all bids. No contract or purchase shall be subdivided to avoid the requirements of this section. Anything to the contrary of this Section 603 notwithstanding, the Council may authorize the County Purchasing Agent to negotiate extensions of existing contracts for garbage and refuse collection, without competitive bidding, upon such terms and for such duration as the Council may by law prescribe; provided, however, that any such law shall require the County Purchasing Agent to poll the residents of the service area covered by a collection contract, and shall provide that the County Purchasing Agent not conclude any agreement for an extension unless a certain number of the residents of the service area, as prescribed by the Council, indicate their concurrence in the extension.  (Amended, CB-92-1976, ratified Nov. 2, 1976; Amended, CB-137-1986, ratified Nov. 4, 1986; Amended, CB-117-1987, ratified Nov. 8, 1988; Amended, CB-68-2002, ratified Nov. 5, 2002)</p>
	<p><b>Section 1105. Charter Amendment.</b>  Amendments to this Charter <u>may be proposed by an act of the Council approved by not less than two-thirds of the members of the full Council,</u> and such action shall be exempt from executive veto. Amendments <u>may also be proposed by petition filed with the County Executive and signed by 10,000 registered voters of the County.</u> When so proposed, whether by act of the Council or by petition, <u>the question shall be submitted to</u></p>

	<i>the voters of the County at the next general election</i> occurring after the passage of said act or the filing of said petition; and if at said election the majority of votes cast on the question shall be in favor of the proposed amendment, such amendment shall stand adopted from and after the thirtieth day following said election. Any amendments to this Charter, proposed in the manner aforesaid, shall be published by the County Executive in the County newspapers of record for five successive weeks prior to the election at which the question shall be considered by the voters of the County.
Advertising Requirements	<u>Charter</u> authorizes the County purchasing agent to make requirements for period and manner of advertisement of procurement opportunities.
Security Requirements – bids	Charter does not address
Security Requirements – performance	Charter empowers the County purchasing agent to set performance bond requirements. ( <u>Charter</u> Article 6, §603)
Interviewee(s)	Leslie Jackson-Jenkins, Esq., Interim Administrator, Contract Administration & Procurement Division, Office of Central Services, Prince George’s County 301.883.6400

## IV. Summaries of Procurement Processes in Other U.S. Cities

### ATLANTA

Competitive Bid Threshold (formal)	\$ 50,000 ( <u>Code</u> Chapter 2, Article X, Division 4, §2-1190.a)
Using Agency Purchase Threshold	\$500 (petty cash) or \$20,000 if the purchase is “to be paid for by a miscellaneous requisition directing the CFO to make payment from funds previously allocated to the agency” ( <u>Code</u> Chapter 2, Article X, Division 4, §2-1190.b)
Purchasing Director Threshold	\$ 300,000 (Mayoral designee, can sign contracts)
Approval Authority and Process*	<ul style="list-style-type: none"> <li>• All purchases centralized in the Department of Procurement -- DOP (separate Cabinet department, not part of the Department of Finance), headed by the Chief Procurement Officer – CPO (<u>Code</u> Chapter 2, Article V §2-250), <u>Code</u> Chapter 2, Article X §2-1138.a)</li> <li>• Using agencies (with authorization of head of department) file requisitions with DOP, which manages source selection. Using agencies review bids/proposals, make recommendations (along with Office of Contract Compliance) to DOP for award. (<u>Code</u> Article X §2-1139.a)</li> <li>• Purchases of supplies, services, and construction up to \$50,000 (small purchases) made in accordance with procedures adopted by the CPO. “Insofar as it is practicable” no less than three bidders are invited to submit quotations, and the award made to the lowest responsive bidder. (<u>Code</u> Chapter 2, Article X, Division 4, §2-1190.a) CFO must certify that the using agency has sufficient unencumbered funds (<u>Code</u> Chapter 2, Article X, Division 4, §2-1190.d)</li> <li>• Purchases between \$50,000 and \$300,000 approved by Mayor or designee</li> <li>• Purchases above \$300,000 must be approved by City Council; DOP prepares legislation.</li> <li>• Purchases to be made from other than the lowest bidder or offeror, or through means other than competitive procurement require approval by the Council prior to award of the contract (<u>Charter</u>, Article VI, Chapter 4, §6-402.f).</li> </ul>
Professional and consultant services	Competitive selection procedures used; requests for proposals to firms that have submitted qualifications; selection of at least three “short-listed” offerors by CPO in consultation with head of the using agency, ranked; CPO begins negotiations with top-ranked firm; if agreement cannot be reached, negotiations opened with second-ranked firm
Process for Change	Municipal charters in Georgia can be amended by ordinances adopted at two regular consecutive meetings of the municipal governing authority, not less than nor more than 60 days apart; or by petition of at least 15% of electors (the standard for cities over 100,000) registered to vote at the last general municipal election and passage by at least half the voters in the subsequent special election. ( <u>Code of Georgia</u> §36-35-3.b)
Recent Changes	<b>September 2007:</b> By ordinance, threshold for procurements requiring City Council approval raised from \$100,000 to \$300,000; threshold for formal bids raised from \$20,000 to \$50,000.
Relevant Charter	<b>ARTICLE III. EXECUTIVE. Chapter 1. THE MAYOR.</b>

Provisions	<p><b>§3-104. Powers and duties</b></p> <p>(14)Purchase supplies, material, equipment and personal property of every type and description, and services for the rental, repair, or maintenance of equipment, machinery, and other city-owned property; provided, however, the purchase amount does not exceed <u>\$300,000.00</u>, such purchases conform with the provisions within Chapter 4 of Article 6 herein and any purchasing and procurement ordinances of the city, and a duly enacted appropriation by the council authorizes expenditures for such purposes. Any award of contract not competitively procured in accordance with the Charter or ordinances of the city, or not awarded to the lowest bidder or offeror, shall be approved by the city council prior to an award;</p>
	<p><b>ARTICLE VI. REVENUE AND ADMINISTRATION. Chapter 4. PROCUREMENT AND DISPOSITION OF PROPERTY</b></p> <p><b>§6-401. Contracting procedures.</b></p> <p>(a) The governing body shall prescribe by ordinance or resolution the procedures to be followed in the making of contracts which shall bind the city. The governing body is authorized to remedy discrimination or the present effects of past discrimination by an affirmative action program which is in compliance with the Constitution and laws of the United States of America and the State of Georgia. All contracts shall be approved as to form by the city attorney. The mayor shall sign all contracts; however, the governing body may authorize the mayor by ordinance to designate another appropriate official to sign any type contract. The municipal clerk shall authenticate all contracts. The original of all contracts shall be maintained on file in the office of the chief financial officer.</p>
	<p><b>§6-402. Purchasing procedures.</b></p> <p>(a) The governing body shall prescribe by ordinance or resolution the procedures for all purchases of real and personal property by the city. The following alternative methods of securing contracts are hereby authorized, as set forth in and defined by ordinances currently effective or hereafter adopted or amended by the city council: competitive sealed bidding; competitive sealed proposals; small purchases not exceeding <u>\$50,000.00</u>; sole-source procurement; emergency procurement; and competitive selection procedures for professional and consultant services. Awards of contracts shall be made to the most responsible and responsive firms, said responsibility and responsiveness to be determined by factors including those set forth in subsection (b) below, including but not limited to compliance with the requirements of any existing minority and female business opportunity development plans and any local preference program as established by City ordinance. The terms “competitive bidding” and “most responsible and responsive firm” shall be defined to include compliance with the requirements of any minority and female business participation plan which has been implemented by city ordinance...</p> <p>(b) In determining the most responsible and responsive firm, the purchasing and contracting authority shall consider the following factors:</p> <ol style="list-style-type: none"> <li>(1) The ability, capacity, and skill of the firm to perform the contract or to provide the services required;</li> <li>(2) The capability of the firm to perform the contract or provide the service promptly, or within the time specified, without delay or interference;</li> <li>(3) The character, integrity, reputation, judgment, experience, and efficiency of the firm;</li> <li>(4) The quality of performance of previous contracts or services;</li> <li>(5) The previous and existing compliance by the firm with laws and ordinances relating to the contract or services;</li> <li>(6) The sufficiency of the financial resources and ability of the firm to perform the contract or provide the service;</li> <li>(7) The compliance of the firm with the requirements of an equal employment opportunity in contracting program as may be prescribed by ordinance;</li> </ol>

	<p>(8) The compliance of the firm with the requirements of a minority and female business enterprise participation program as may be prescribed by ordinance;</p> <p>(9) The quality, availability, and adaptability of the supplies or services to the particular use required;</p> <p>(10)The number and scope of conditions attached to the bid by the firm, if any;</p> <p>(11)Price; and</p> <p>(12)The compliance of the bidder or firm with the requirements of a local preference program as may be prescribed by ordinance.</p> <p>(c) Any and all bids or proposals may be rejected when it is in the best interest of the city to do so; in addition to the foregoing, the governing body shall prescribe by ordinance the procedure for amending, modifying, or otherwise changing contracts and for authorizations for the purchase of goods, materials, supplies, equipment, and services. Prior to the making of purchases and contracts, or amendments, modifications, or changes thereto, the availability of adequate funds shall be certified by the chief financial officer as provided by ordinance.</p> <p>(d)Any and all competitive bids or proposals shall be sealed and shall be opened at the same time in a public place as directed by the council and remain open for public inspection.</p> <p>(e) Contractual work related to any competitive sealed bid or proposal shall not be broken into components or parts so as to avoid the council's approval of awards of greater than <u>\$300,000.00</u>.</p> <p>(f) In exercising the power of purchasing and procurement provided for in section 3-104 of this Charter, the mayor shall adhere to the provisions within this Charter and any ordinance governing purchasing and procurement; provided, however, when the mayor proposes to let a contract to one other than the lowest bidder or offeror or award a contract which has not been competitively procured, the contract shall be approved by the council prior to an award of contract. Any contracts awarded by the mayor pursuant to the powers provided in section 3-104 of this Charter and the provisions herein shall be reported monthly by the chief procurement officer to the president of the council and councilmembers.</p>
Reporting to Council	Procurements less than \$300,000 made by the Mayor (or designee) without Council approval are required to be reported monthly by the CPO to the President of the City Council and the Council members. ( <u>Charter</u> Article VI, Chapter 4, §6-402.f)
Advertising requirements	Invitations to bid to be posted "conspicuously at the Department of Procurement DOP) and advertised on an Internet website of the City of Atlanta, or website designated by the City of Atlanta. In addition DOP may elect to place an advertisement inviting bids in a newspaper of general circulation and in any other medium permitted under the <u>Code</u> . Notice to be posted for 14 consecutive days before due date for bids. ( <u>Code</u> Chapter 2, Article X, Division 4, §2-1188)
Security requirements – bids	Bid security of at least 5% of the bid required for competitive sealed bidding for contracts for supplies and services when the price is estimated to exceed \$50,000. CPO may require bid bonds on contracts below \$50,000. ( <u>Code</u> Chapter 2, Article X, Division 4, §2-1196). This threshold was raised from \$20,000 to \$50,000 in September 2007. ( <u>Code</u> Chapter 2, Article X, Division 4, §2-1197).
Security requirements – performance	Performance and payment security of 100% of the contract price is required on awarded contracts for supplies or services over \$50,000 and on professional and consultant services contracts as determined by the CPO. The CPO may waive performance and payment bonds for contracts below \$20,000 with a written determination that it is in the best interests of the City to do so.
Interviewee(s)	Dickie Padilla, reference librarian (and colleagues), Atlanta Department of Law



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*\* NOTE: Departments of Law and Finance are jointly responsible to the Mayor and the City Council (Code Chapter 2. ADMINISTRATION, Article III. Mayor, §2-183).*

## CLEVELAND

Competitive Bid Threshold (formal)	\$50,000
Using Agency Purchase Threshold	\$0
Purchasing Director Threshold	\$50,000 ( <u>Charter</u> )
Other Thresholds	<ul style="list-style-type: none"> <li>• Noncompetitive purchases for emergency repairs or replacement: \$10,000 (<u>Code</u> Title XV, Chapter 181.12)</li> <li>• Noncompetitive emergency purchases over \$10,000 require the agreement of the Mayor, the President of the Council, the Chairman of the Finance Committee of the Council, and the Director of Finance (<u>Code</u> Title XV, Chapter 181.12)</li> <li>• Noncompetitive purchases for brand name commodity or article: \$1000 if approved by the Director of Finance; \$10,000 if approved by the Mayor (<u>Code</u> Title XV, Chapter 181.12)</li> </ul>
Approval Authority and Process	<ul style="list-style-type: none"> <li>• All purchases are made through the Division of Purchases and Supplies (DPS) in the Finance Department (<u>Charter</u>, Chapter 17, §101). Using agency department heads approve using agencies' requests for purchases.</li> <li>• Purchases up to \$1000 can be made without competition by the Commissioner of Purchases and Supplies for the "best price obtainable." (<u>Code</u> Title XV, Chapter 181.10)</li> <li>• Purchases between \$1000 and \$50,000* are posted on the City's bulletin board and bids solicited (by telephone or direct mail) by the Commissioner of Purchases and Supplies. Three bids are required, awards to "lowest and best bidder" (<u>Code</u> Title XV, Chapter 181.09)</li> <li>• Requests for bids or proposals above \$50,000 must be "authorized and directed" by ordinance of the City Council ordinance (<u>Charter</u>) and contractors chosen by competitive bidding. Bids received by DPS are transmitted to the using agency's director, who transmits bids and recommendations to the Board of Control (<u>Code</u> Title XV, Chapter 181.10). The Board of Control, which consists of the Mayor and the cabinet and meets weekly, has sole power to award contracts (<u>Charter</u>, Chapter 13 §80). If it approves an award, the Board of Control grants approval for the using agency to sign a contract. (<u>Code</u>, Title XV, Chapter 181.10). All purchases require certification from the Director of Finance regarding availability of funds (<u>Charter</u> Chapter 17, §106).</li> </ul> <p style="text-align: center;">*except emergency, sole source and professional services procurements</p>
Process for change	<ul style="list-style-type: none"> <li>• Affirmative vote by 2/3 of the City Council members is required to raise threshold for Council approval. Charter review is required every 20 years.</li> <li>• Procurement regulations established by City Council ordinance and directed by the Board of Control.</li> </ul>
Recent Charter Changes	<ul style="list-style-type: none"> <li>• Current Charter Review Commission (appointed January 2008, reported August 2008, procurement changes approved by City Council September 2008 and voters approved November 2008, effectively immediately The threshold for City Council approval was</li> </ul>

	<p>last changed in 1989. The approved Charter changes:</p> <ul style="list-style-type: none"> <li>○ Charter amended to require Council approval for contracts over \$50,000 (an increase from \$10,000 today).</li> <li>○ The Council would be empowered to raise this limit in the future by a two-thirds affirmative vote.</li> <li>● Dept. of Finance estimates that 200 pieces of legislation will be eliminated annually, and the procurement process reduced by an average of 20 weeks, lowering costs to both the City and companies doing business with the City.</li> <li>● In 2007, 1,730 procurements of \$10,000 to \$50,000 totaling \$39.5 million were made. <a href="http://www.clevelandcitycouncil.org/Home/CityofClevelandCharterReview/tabid/407/Default.aspx">www.clevelandcitycouncil.org/Home/CityofClevelandCharterReview/tabid/407/Default.aspx</a></li> </ul>
Relevant Charter Provisions	<p><b>CHAPTER 13 §80 Board of Control</b>  The Mayor and the directors of the several departments, whether established by this Charter or by ordinance, shall constitute a Board of Control. The Mayor shall be ex-officio President of the Board. The vote of a majority of all members of the Board shall be necessary to the adoption of any question, motion or order. All votes shall be by "yeas" and "nays" and entered on the record. All meetings of the Board shall be public, a record of its proceedings shall be kept, and an abstract of its proceedings shall be printed in the City Record.  (Effective November 9, 1931)</p>
	<p><b>CHAPTER 17 §101 Division of Purchases and Supplies</b>  There shall be in the Department of Finance a Division of Purchases and Supplies. The Commissioner of Purchases and Supplies shall make all purchases for the City in the manner provided by ordinance...</p>
	<p><b>CHAPTER 17 §102 Governing Regulations</b>  ... before making any purchase, said Commissioner shall give opportunity for competition under such rules and regulations as the Council shall establish.</p>
	<p><b>CHAPTER 17 §106 Contracts Certified</b>  No contract, agreement, or other obligation, involving the expenditure of money, shall be entered into, nor shall any ordinance, resolution, or order for the expenditure of money be passed by the Council, or be authorized by any officer of the City, unless the Director of Finance first certifies to the Council or to the proper officer, as the case may be, that the money required for such contract, agreement, obligation, or expenditure, is in the Treasury, to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose, which certificate shall be filed and immediately recorded. The sum so certified shall not thereafter be considered unappropriated until the City is discharged from the contract, agreement or obligation.  (Effective November 9, 1931)</p>
	<p><b>CHAPTER 17 §108 Authorization of Contracts</b>  (a) All contracts involving any expenditure in excess of fifty thousand dollars (\$50,000.00) shall first be authorized and directed by ordinance of Council. When so authorized and directed, the director of the department involved shall make a written contract with the lowest and best bidder, after advertisement once a week for two consecutive weeks in the City Record and after competitive bidding.  (Effective November 4, 2008)</p>
Advertising requirements	<ul style="list-style-type: none"> <li>● Required posting of requisitions for \$1,000 to \$50,000 purchases on City bulletin board at least 48 hours before taking bids.</li> <li>● Advertisements for bids on purchases over \$50,000 required to be published in the weekly <u>City Record</u> once a week for two consecutive weeks</li> </ul>

Security requirements - bids	<ul style="list-style-type: none"> <li>• Bid bond of 5% of the bid is required for purchase contracts &gt;\$50,000 (Title XV, Chapter 181.24)</li> </ul>
Security requirements - performance	<ul style="list-style-type: none"> <li>• Meets requirements of the Department of Law</li> <li>• For contracts over \$50,000, performance bond equal to at least 25% of the contract price on materials and at least 50% of the contract price on services supplied is required.</li> <li>• For contracts under \$500,000, the requirement may be adjusted to promote participation by MBEs and FBEs.</li> </ul>
Interviewee(s):	Karen Martinez, Cleveland Law Department reference librarian (in consultation with Civil Division procurement specialist) 216.664.2800

*Updated December 2009*

## NEW YORK CITY

Competitive Bid Threshold (formal)	\$100,000
Using Agency Purchase Threshold	<ul style="list-style-type: none"> <li>• \$1,000 non-competitive (<u>Charter</u>, Chapter 13 § 329.c)</li> <li>• \$5,000 non-competitive with prior approval or across-the-board or selective raising of the threshold (to a maximum of \$5000) by the Commissioner of Citywide Administrative Services (DCAS) (<u>Charter</u>, Chapter 13 § 329.c)</li> <li>• Using agencies can procure goods below \$100,000.</li> <li>• Using agencies have independent unlimited authority to procure services.</li> <li>• If procurement of services exceeds \$100,000 and is to be conducted by a method other than competitive sealed bid (e.g. request for proposals or negotiation), approval of the Office of Management and Budget and the Mayor’s Office of Contract Services is required.</li> </ul>
Purchasing Director Threshold	The Department of Citywide Administrative Services (DCAS) handles procurements over the “small purchases” limit (\$25,000 for goods, \$100,000 for services)
Approval Authority and Process	<ul style="list-style-type: none"> <li>• Purchases of goods up to \$5000 (“micropurchases”) can be made without competition by the using agency’s Agency Chief Contracting Officer (ACCO) (<u>Charter</u>, Chapter 13 §329.c,d) who is responsible for making sure that the non-competitive price is reasonable and that minority and women-owned businesses are given opportunities for awards. (<u>PPB Rules</u> 3-08c.1.ii)</li> <li>• Purchases between \$5,000 and \$100,000 are handled competitively by the using agency’s ACCO, who selects at least five entities at random from a bidders list (<u>PPB Rules</u> 3-08c.1.iii), or can solicit bids.</li> <li>• Solicitations for small purchases ≤\$25,000 can be made by oral or written means; solicitations for small purchases over \$25,000 require written solicitation. (<u>PPB Rules</u> §3-08c.2.i.)</li> <li>• Purchases of goods/commodities above \$100,000 are handled by the Department of Citywide Administrative Services, and must be approved by the Office of Management and Budget for adequacy of funds, and the Mayor’s Office of Contract Services.</li> <li>• Public hearings are required for proposed purchases above \$100,000 if not conducted by competitive sealed bid or are emergency, pre-qualified, or accelerated procurements. (<u>Charter</u>, Chapter 13 §326.a; <u>PPB Rules</u>, Section 2-11)</li> <li>• Purchases for goods, services, or construction in excess of \$5 million to be let by other than specified methods require the approval of the mayor. (<u>Charter</u>, Chapter 13 §317.b)</li> <li>• A determination to use selective solicitation (competitive sealed bids or proposals from prequalified vendors) must be approved by the mayor unless the mayor determines that mayoral approval is not necessary for a specific agency or category of contracts. (<u>Charter</u>, Chapter 13 §318 and §320)</li> <li>• Notice of intention to make sole source procurements must be published immediately in the City Record, soliciting applications of vendors qualified to provide such goods, services, or construction prior to initiation of sole source negotiation or in the future (<u>Charter</u>, Chapter 13 §321)</li> <li>• All executed contracts must be filed before implementation with the comptroller, who determines whether there are sufficient funds, that the contractor has not been debarred, and that there has not been corruption in the award process (<u>Charter</u>, Chapter 13 §328.a,b,c)</li> </ul>

Professional and Consultant Services	Agencies have unlimited authority to procure professional and consultant services
Process for Change	<p>Procurement Policy Board (PPB) sets procurement policy and regulations. Amendment of PPB rules is subject to the Civil and Administrative Procedures Act (<u>Charter</u>, Chapter 45), which requires:</p> <ul style="list-style-type: none"> <li>• Publication of the proposed rule in the City Record and 30 public notice of a public hearing</li> <li>• Corporation Counsel review to affirm that the PPB has authority to issue the rule</li> <li>• Filing of the proposed rule with the Corporation Counsel for publication in the Compilation (of regulations),</li> <li>• Publication of rule in the City Record, 30 day period after publication before the rule is effective</li> </ul> <p>Competitive bid threshold is set by PPB and Council concurrently. (<u>Charter</u>, Chapter 13 §314)</p> <p>Threshold for non-competitive purchases by agencies can be raised by the Commissioner of Citywide Administrative Services with the approval of the Mayor, up to \$5000. Proposed increases in the threshold above \$5000 require approval of the Comptroller. (<u>Charter</u>, Chapter 13 §329.d)</p> <p><i>NOTE: NYC <u>Administrative Code</u> defines Locally Based Enterprise Program (LBE), Minority Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), and Emerging Business Enterprise (EBE) and includes rules and sets participation goals for categories of procurement from LBEs, MBEs, WBEs, and EBEs; <u>PPB Rules</u> includes all other procurement regulations.</i></p>
Recent Changes	1990 Charter Revision eliminated New York City Board of Estimate after U.S. Supreme Court ruled it unconstitutional because it lacked proportional representation of the boroughs; procurement responsibilities of the Board of Estimate delegated to the Mayor and the City Council.
Relevant Charter Provisions <u>[Highlighting added]</u>	<p><b>Chapter 13. §311. Procurement Policy Board</b></p> <p>a. There shall be a procurement policy board consisting of five members, three of whom shall be appointed by the mayor and two of whom shall be appointed by the comptroller. Each member shall serve at the pleasure of the appointing official. Members shall have demonstrated sufficient business or professional experience to discharge the functions of the board. At least one member appointed by the mayor and one member appointed by the comptroller shall not hold any other public office or public employment. The remaining members shall not be prohibited from holding any other public office or employment provided that no member may have substantial authority for the procurement of goods, services or construction pursuant to this chapter. The mayor shall designate the chair.</p> <p>b. The board shall promulgate rules as required by this chapter, including rules establishing:</p> <ol style="list-style-type: none"> <li>1. the methods for soliciting bids or proposals and awarding contracts...</li> <li>2. the manner in which agencies shall administer contracts and oversee the performance of contracts and contractors;</li> <li>3. standards and procedures to be used in determining whether bidders are responsible;</li> <li>4. the circumstances under which procurement may be used for the provision of technical, consultant or personal services...</li> <li>5. the form and content of the files which agencies are required to maintain pursuant to section three hundred thirty-four and such other contract records as the board deems necessary and appropriate;</li> <li>6. the time schedules within which city officials shall be required to take the actions required by this chapter...</li> <li>7. procedures for the fair and equitable resolution of contract disputes; and</li> </ol>

	<p>8. such other rules as are required by this chapter.</p> <p>c. The board may promulgate such additional rules, policies and procedures consistent with and as may be necessary to implement the provisions of this chapter. The board shall annually review all of its rules, policies and procedures and make such revisions as the board deems necessary and desirable...</p> <p>d. The board shall promulgate rules to facilitate the timely and efficient procurement of client services...</p> <p>e. The board shall submit an annual report to the mayor, comptroller, and council setting forth the professional standards for agency contracting officers adopted by the mayor, including any applicable certification process.</p> <p>f. In the promulgation of any rules pertaining to the procurement of construction or construction related services, the board shall consult with any office designated by the mayor to provide overall coordination to the city's capital construction activities.</p> <p>g. The board shall make such recommendations as it deems necessary and proper to the mayor and the council regarding the organization, personnel structure and management of the agency procurement function...</p> <p>h. <u>The board shall not exercise authority with respect to the award or administration of any particular contract</u>, or with respect to any dispute, claim or litigation pertaining thereto.</p>
	<p><b>Chapter 13. §312. Procurement; general rule and exceptions.</b></p> <p>a. <u>Prior to entering into or renewing a contract valued at more than one hundred thousand dollars to provide technical, consultant, or personal services</u>, an agency shall follow the procedure established herein.</p> <p>1. Prior to issuing an invitation for bids, request for proposals, or other solicitation, the agency shall determine whether such contract will directly result in the displacement of any city employee. [sections 2-8: additional specifications for analysis of displacement and assistance for displaced city employees]</p> <p>b. 1. Except as provided for in sections three hundred fourteen [small purchases], three hundred fifteen [emergency procurement] and three hundred sixteen [intergovernmental procurement], <u>contracts shall be awarded by competitive sealed bidding</u> under such rules as shall be made by the procurement policy board, except that, in a special case as defined in subdivision b of this section, the head of an agency proposing to award such contract may order otherwise in accordance with policies and procedures established by the procurement policy board.</p> <p>2. A determination by the head of an agency to use other than competitive sealed bidding except as provided for by sections three hundred fourteen and three hundred sixteen shall be made in writing, stating the reasons why competitive sealed bidding is not practicable or not advantageous and why the method of procurement selected pursuant to section three hundred seventeen [alternatives to sealed competitive bidding] is the most competitive alternative that is appropriate under the circumstances. The head of the agency shall include the determination or a summary of the determination in the notice of solicitation, or for an emergency procurement in the notice of award, required to be published pursuant to section three hundred twenty-five of this chapter.</p> <p>c. 1. For the purposes of this chapter, the term "special case" shall be defined as a situation in which it is either not practicable or not advantageous to the city to use competitive sealed bidding for one of the following reasons:</p> <p>i. specifications cannot be made sufficiently definite and certain to permit selection based on price alone;</p> <p>ii. judgment is required in evaluating competing proposals, and it is in the best interest of the city to require a balancing of price, quality, and other factors;</p> <p>iii. the good, service or construction to be procured is available only from a single source;</p> <p>iv. testing or experimentation is required with a product or technology, or a new source for a product or technology, or to evaluate the service or reliability of such product or technology; or</p>

	<p>v. such other reasons as defined by rule of the procurement policy board.</p> <p>2. The procurement policy board may provide by rule that it is either not practicable or not advantageous to the city, for one of the reasons set forth in paragraph one of this subdivision, to procure a specified type of good, service or construction by competitive sealed bidding.</p>
	<p><b>Chapter 13. §314. Small purchases.</b></p> <p>a. Notwithstanding any other provision of this charter, <u>the procurement policy board and the council may, by concurrent action, establish dollar limits for procurement of goods, services, construction, or construction-related services that may be made without competition or without public advertisement.</u> Awards pursuant to this section shall be made in accordance with rules of the procurement policy board.</p> <p>b. On or before September thirtieth, two thousand and three, and on or before the last day of every quarter thereafter, the mayor or his or her designee shall submit to the council and the comptroller a report detailing each small purchase award made pursuant to this section during the quarter that ended three months before such report is due and for which information is required to be contained in the computerized data base maintained pursuant to subdivision a of section 6–116.2 of the administrative code. Such report shall provide the name of the vendor selected to fulfill the requirements of each such small purchase award, the date and dollar amount of each such small purchase award and the type of goods or services provided.</p>
	<p><b>Chapter 13. §317. Alternatives to competitive sealed bidding.</b></p> <p>b. Each contract for goods, services or construction in value of more than <u>five million dollars</u> proposed by an agency to be awarded which is let by other than (i) competitive sealed bidding, (ii) competitive sealed bids from prequalified vendors, or (iii) competitive sealed proposals, where the weight assigned to each of the factors or criteria to be considered in selecting the proposal most advantageous to the city was set forth in a writing filed in the agency contract file prior to the opening of proposals, shall require the approval of the mayor prior to its execution. Notwithstanding the preceding sentence, the mayor may, where the mayor has determined that it is appropriate, exclude an agency's contracts or a particular category of contracts from the approval requirement of this subdivision.</p>
	<p><b>Chapter 13. §326. Public hearings on contract awards.</b></p> <p>a. Prior to entering into any contract for goods, services or construction to be awarded by other than competitive sealed bidding or competitive sealed bids from prequalified vendors, the value of which exceeds <u>one hundred thousand dollars</u>, the agency shall upon reasonable public notice conduct a public hearing to receive testimony regarding the proposed contract. Notwithstanding the preceding sentence, if, within a period of time after such notice, which period of time shall be determined by the procurement policy board, no individual requests an opportunity to speak at such a public hearing with respect to any such proposed contract the value of which does not exceed one million dollars, then such public hearing need not be conducted. The procurement policy board may by rule exempt from this public hearing requirement contracts to be let which do not differ materially in terms and conditions, as defined by the board, from contracts currently held by the city where the parties to such contracts are the same; provided, that under no circumstance may such exemption apply to any contract in value exceeding <u>ten million dollars</u>.</p> <p>b. The requirements of this section shall not apply to any procurement (i) let pursuant to a finding of an emergency under section three hundred fifteen, (ii) required to be made on an accelerated basis due to markets which experience significant, short-term price fluctuations, as identified by rule of the board, or (iii) where a public hearing could disclose litigation strategy or otherwise impair the conduct of litigation by the city.</p>
	<p><b>Chapter 13. §329. By whom procured.</b></p>



	<p>a. All services to be performed by contract, including the furnishing of goods incident thereto, shall be obtained by the agency for whose use the appropriation therefor shall have been made, except as otherwise provided by law or by rule of the procurement policy board.</p> <p>b. All other goods shall be purchased or procured by the department of citywide administrative services, except as otherwise provided pursuant to this chapter or other law.</p> <p>c. Pursuant to rules of the procurement policy board and subject to other sections of this chapter, each agency may purchase directly goods in an amount not to exceed <u>one thousand dollars</u> for each transaction or, with the prior approval of the commissioner of citywide administrative services, in an amount not to exceed <u>five thousand dollars</u> for each transaction. The limitation of this subdivision shall not apply to purchases by an agency under a vendor contract entered into by the commissioner of general services.</p> <p>d. The dollar limits for direct agency purchases without the prior approval of the commissioner of citywide administrative services pursuant to subdivision c of this section <u>may be raised to five thousand dollars</u> for each transaction for any or all agencies by the commissioner of citywide administrative services with the approval of the mayor. Any proposed <u>increases in the limits for such purchases above five thousand dollars</u> shall be subject to the further approval of the comptroller. Any increase in dollar limits pursuant to this subdivision shall be published in the City Record and may be rescinded by the commissioner of citywide administrative services, the mayor, or the comptroller.</p> <p>e. Subject to the approval of the comptroller, a specific procurement of a specific good may be delegated by the commissioner of citywide administrative services, in the best interest of the city, to any agency for direct purchase by such agency, and shall not be subject to the provisions of subdivisions b, c or d of this section; provided, however, that such delegation shall not be made for goods that are to be generally used by city agencies.</p>
<p>Advertising Requirements</p>	<p>Solicitation of bids or proposals for purchases above the small purchase threshold and notice of awards made must be published in the City Record and "where appropriate" in newspapers of city, state, or national distribution and trade publications (<u>Charter</u>, Chapter 13 §325.3)</p> <p>Requests for proposals and public notices of contracting opportunities shall, simultaneously with their publication, be posted on the city's website in a location that is accessible by the public. (<u>Code</u> §6-111.1)</p> <p>Rules of PPB set requirements for publishing of goods, services or construction regularly procured by each agency and of solicitations from vendors interested in prequalification. (<u>Charter</u>, Chapter 13 §325.3.c)</p> <p>PPB, in consultation with Commissioner of DCAS, makes rules regarding notifications: Invitations for Bids or notices of their availability to be 1) mailed, faxed, hand delivered to all on the bidders list and others necessary to secure competition; and 2) published at least once in the City Record and on the City website in a location that is accessible to the public (<u>PPB Rules</u> 3-02e).</p>
<p>Security Requirements – bids</p>	<p>Set by PPB (<u>Charter</u>, Chapter 13 §313.c)</p>
<p>Security Requirements – performance</p>	<p>Set by PPB (<u>Code</u>, §6-113).</p>
<p>Interviewee(s)</p>	<p>Maria G. Simpson, Director, Mayor's Office of Contract Services msimpson@cityhall.nyc.gov 212.788.0018 Thomas Dowling, Deputy Agency Chief Contracting Officer (ACCO), New York City Law Department, 212.788.1008</p>

## PHILADELPHIA

Competitive Bid Threshold (formal)	\$25,000 +CPI adjustment every five years ( <u>Charter</u> Article 8, Chapter 2, §8-200.2)
Using Agency Purchase Threshold	\$25,000 (\$5,000 without higher level approval)
Purchasing Director Threshold	\$ unlimited
Other thresholds	Requirements contracts: \$100,000 limit on purchasing agency buyers, \$5 million on purchasing director
Approval Authority and Process	<ul style="list-style-type: none"> <li>• Purchases made centrally by the Department of Procurement (DOP), headed by the Procurement Commissioner (PC) (<u>Charter</u>, Article VI, Chapter 5, §6-500a.1); DOP may delegate power to purchase (<u>Charter</u>, Article VI, Chapter 5, §6-500a.7)</li> <li>• Purchases below \$2,000 not subject to competitive bidding (see annotation on charter p. 97)</li> <li>• Purchases up to \$25,000 “small order purchases” made by agencies, which solicit quotes for goods and services (including certified small and minority businesses); quotes required to be in writing or by fax (not telephone or electronic)</li> <li>• Purchases over \$25,000 are handled by the purchasing department using advertised sealed bids.</li> <li>• Every non-competitively bid contract shall be approved in writing by the Procurement Commissioner, the Finance Director, and the City Solicitor prior to execution, unless the City Council is a party to the contract (<u>Code</u> Title 17, Chapter 17, §17-1402.1.g)</li> <li>• Renewal or extension of a contract beyond one year requires authorization by ordinance of the City Council (<u>Charter</u> Article II, Chapter 3, §2-309.1)</li> <li>• Before contract is effective, Director of Finance must approve it as to the availability of funds (<u>Charter</u> Article VI, Chapter 1, §6-104)</li> <li>• Sole source contracts and emergency contracts are rarely used because of strict requirements.</li> <li>• No procurement cards.</li> </ul>
Professional and consultant services	Not subject to lowest responsible bidder requirements of §8-200 of the charter
Process for Change	Passage of City Council ordinance and approval by voters required to amend the charter.
Recent Changes	<b>December 2005:</b> ARTICLE II. THE COUNCIL, Chapter 3. Legislation, § 2-309. Leases and Contracts Procurement reform –amended and new subsections added: (2) requires contracting department or agency that renews or extends the term of a contract or lease beyond one year to file a written certification with the Mayor, President of the City Council, Chief Clerk of the Council, and the Department of Records that the renewal or extension is in the best interest of the City. (3) gives the Council the power by ordinance to require disclosures by persons seeking and those who have City leases, contracts, concessions, or other agreements, including campaign contributions, relatives who are City

	<p>employees; and to determine by ordinance whether persons who have made, have solicited, or have otherwise been involved in raising certain campaign contributions are eligible for City leases, contracts, concessions, or other agreements, or for grants, loans, tax incentives, or other forms of assistance from the City.</p> <p><b>November 2003</b> Competitive bid minimum raised from \$10,000 to \$25,000  <b>November 1991</b> Competitive bid minimum raised from \$2,000 to \$10,000</p>
<p>Relevant Charter Provisions (<u>Emphasis added</u>)</p>	<p><b>ARTICLE VI: EXECUTIVE AND ADMINISTRATIVE BRANCHES – POWERS &amp; DUTIES – Director of Finance, Financial Departments, Boards &amp; Commissions, City Treasurer, Procurement Department &amp; Board of Retirement</b>  <b>Chapter 5. Procurement Department</b>  <b>§ 6-500. Functions.</b>  The Procurement Department shall have the power and its duty shall be to perform the following functions:</p> <p>(a) Procurement.</p> <p>(1) Except as otherwise provided in this charter, it shall purchase, and when feasible store and distribute all personal property to be procured with funds from the City Treasury...</p> <p>(5) In the performance of its procurement functions, the Department shall consult with and consider recommendations of the Council, the Mayor, the officer, department, board or commission of the City or other governmental agency, whose requirements it is procuring.</p> <p>(6) Whenever the Department shall procure any item which is to be paid for, out of an appropriation made to another department, board or commission of the City or to any other government agency or from a special fund, the Department shall act as agent for such department, board, commission or agency.</p> <p>(7) The Department may permit any officer, department, board or commission of the City or other agency to make a particular purchase or class of purchases directly, but in any such case the Department shall first approve in writing the specifications for such purchase.</p> <p>(c) Contracts. After advertising and the receipt of competitive bids, the Department shall let all contracts to be paid for with funds appropriated from the City Treasury for which competitive bids are required, including contracts for concessions whether or not the specifications were prepared and the performance of the contract is to be supervised by another department, or by a board, commission or other governmental agency.</p>
	<p><b>ARTICLE VIII PROVISIONS OF GENERAL APPLICATION</b>  <b>Chapter 2. Contracts, Procurement, Property and Records</b>  <b>§8-200 Contracts</b></p> <p>(1) Except in the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, competitive bids shall be secured before any purchase, by contract or other-wise, is made or before any contract is awarded for construction, alterations, repairs or maintenance or for rendering any services to the City <u>other than professional services</u> and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder; provided, however, that City Council may, by ordinance, prescribe bid preferences for businesses located in or doing business in Philadelphia, and provided further that <u>Council may, by ordinance, regulate the process by which purchases and contracts not subject to the lowest responsible bidder requirement of this paragraph are awarded</u>, and may require that contracts with agencies (as that term is defined in subsection <u>6-400(c)</u> of this Charter) or with other entities include provisions obligating such agencies or entities to comply with any process established by Council under the authority of this subsection, except that such regulations may not require Council authorization of a contract unless Council</p>

	<p>authorization is required by some other provision of this Charter.</p> <p>(2) If any purchase or contract for which competitive bidding is required involves an expenditure of more than <u>twenty-five thousand (\$25,000) dollars</u>, which amount shall be adjusted every five (5) fiscal years as rounded to the nearest one thousand (\$1,000) dollars to reflect the percentage change in the most recently published Consumer Price Index for All Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, United States Department of Labor, Bureau of Labor Statistics, the following procedure shall be applicable:</p> <p>(a) The Procurement Department shall advertise for sealed bids at least once a week for two weeks in one of the three newspapers having the largest paid circulation in the City and in such other newspapers as it deems necessary. The Department shall require a certified check in an appropriate amount which shall be stated in the specifications to accompany all bids unless a bidder has filed an annual bid bond in excess of such amount;</p> <p>(b) Bids shall publicly be opened and tabulated in the presence of a representative of the City Controller at the time specified for their opening. The Department may reject all bids if it shall deem it in the interest of the City so to do. Otherwise the contract shall be awarded to the lowest responsible bidder;</p> <p>(c) Within ten days after the award of a contract, the successful bidder shall substitute for his certified check a performance bond, and where appropriate, a labor and materials bond containing such terms as the Department and the City Solicitor shall require and in such amount as the Department may determine;</p> <p>(d) The contract shall be in writing and shall be executed in behalf of the City by the Procurement Department but only after it has been approved as to form by the City Solicitor and as to availability of funds under the budget and appropriations by the City Controller and the Director of Finance. It shall contain a provision that in the performance of the contract the contractor will not discriminate nor permit discrimination against any person because of his race, color, religion or national origin;</p>
Reporting to Council	Quarterly, the Mayor shall provide a report to the Council describing each non-competitively bid contract made over the preceding three months. ( <u>Code</u> Title 17 §17-403.3).
Advertising requirements	The Procurement Department shall advertise for sealed bids at least once a week for two weeks in one of the three newspapers having the largest paid circulation in the City and in such other newspapers as it deems necessary. ( <u>Charter</u> , Article VIII, Chapter 2 §8-200.2.a)
Security requirements – bids	<ul style="list-style-type: none"> <li>• The Department shall require a certified check in an appropriate amount which shall be stated in the specifications to accompany all bids unless a bidder has filed an annual bid bond in excess of such amount. (<u>Charter</u>, Article VIII, Chapter 2 §8-200.2.a)</li> <li>• The Procurement Department may permit bidders to file an annual bond to cover bids or performance on contracts that may be awarded during the annual period. (<u>Charter</u>, Article VIII, Chapter 2 §8-200.2.e)</li> <li>• For bids under \$25,000, no bid security is required; for bids over \$25,000 and up to \$500,000, vendors may enroll in the city’s Master Bid Security Program or provide security in an approved form; for bids over \$500,000 or for demolition services, a certified check or bond in approved form is required. (<u>Vendors Guide</u>)</li> </ul>
Security requirements – performance	<ul style="list-style-type: none"> <li>• Within ten days after the award of a contract, the successful bidder shall substitute for his certified check (bid security) a performance bond, and where appropriate, a labor and materials bond containing such terms as the Department and the City Solicitor shall require and in such amount as the Department may determine. (<u>Charter</u>, Article VIII, Chapter 2 §8-200.2.c)</li> </ul>

	<ul style="list-style-type: none"> <li>• The Procurement Department may permit bidders to file an annual bond to cover bids or performance on contracts that may be awarded during the annual period. (<u>Charter, Article VIII, Chapter 2 §8-200.2.e</u>)</li> <li>• Service, supply, and equipment contracts under \$500,000 (unless otherwise specified and excluding demolition contracts) require participation in the city's Master Performance Security Program; service, supply, and equipment contracts over \$500,000 require an individual performance bond. (<u>Vendors Guide</u>)</li> </ul>
Interviewee(s)	Mary Stitts, Deputy Commissioner, Department of Procurement, mary.stitt@phila.gov 215.686.4754

## ST. LOUIS

Competitive Bid Threshold (formal)	\$5,000
Using Agency Purchase Threshold	\$500/vendor/year
Purchasing Director Threshold	\$ unlimited for competitive bids for supplies, equipment, and material ( <u>Charter</u> , Article XV, §29)
Approval Authority and Process	<ul style="list-style-type: none"> <li>• Purchases up to \$5,000 can be made informally, using written quotes only.</li> <li>• Purchases of goods over \$5,000 can be made by the Supply Commissioner (<u>Charter</u>, Article XV, Section 29), with the approval of the Board of Standardization.</li> <li>• Contracts for purchase of goods must be approved by the Board of Standardization (<u>Code</u>, Title V, §5.58.050), which meets in open session on the second and fourth Wednesdays of each month.</li> </ul>
Professional and Consultant Services	Purchases of professional services over \$5,000 are approved and recommended by a professional services selection committee consisting of the 1) director (or designee) of the department/division/agency seeking the contract, 2) member of the staff of the seeking agency, 3) one current City employee selected by the Mayor, 4) one current employee of the City selected by the Comptroller, and 5) one current employee of the City selected by the President of the Board of Aldermen. ( <u>Code</u> §3.97.020) The RFP, solicitation method, and selection process are governed by rules and regulations promulgated by the Board of Public Service for the selection of professional service providers. ( <u>Code</u> §3.97.050)
Process for Change	Change to advertised competitive bid threshold requires amendment of the Charter.
Recent Charter Changes	April 2003: Voters approved an increase in the threshold for no-advertised contracts from \$500 to \$5000; using agency procurement threshold raised from \$200 to \$500. 2003: Ordinance passed to permit cooperative procurement (not a charter change)
Relevant Charter Provisions	<p><b>Article XV DEPARTMENT OF FINANCE</b>  <b>Section 1 Composition.</b>  The department of finance shall include the office of the comptroller and the assessment, collection, treasury and supply divisions.</p>
	<p><b>Section 28. Board of Standardization</b>  The comptroller, supply commissioner and president of the board of public service shall personally or by deputy constitute the board of standardization, whose duty it shall be to classify and standardize all supplies and materials purchased by the city or used for municipal purposes and prepare precise specifications for all supplies to be purchased through the supply division. The board may maintain such laboratories or other methods of testing as may be necessary.</p>
	<p><b>Section 29. How supplies, equipment and materials are leased and purchased.</b>  <u>Supplies, equipment, and materials</u> for all departments, boards or officers, exclusive of material for public work or improvements, shall be purchased or leased only through the Supply Division, according to such standards and specifications, if any, adopted or prepared by the Board of Standardization, and by advertising for proposals therefore. Bids may be for one or more or all the articles advertised for, but there shall be a specific</p>

	<p>bid on each article. The award may be made to the lowest bidder for any article or to the lowest bidder for the entire requisition or any part thereof; but the Board of Standardization may reject any or all bids or any part of any bid. The Supply Commissioner may contract for supplies, equipment and material in any amounts or for any periods as may be approved by the Board of Standardization, and subject to the provisions of this Charter. In cases of emergency, to be determined by said board, purchases or leases may be made without advertising. Purchases or leases in amounts not exceeding <u>five thousand dollars</u> (\$5,000.00) under any one contract may be also made, with the written approval of the Comptroller, without advertising, after securing competitive bids, but there shall be no division of requisitions or contracts for the purpose of securing this privilege. The Supply Commissioner shall inspect and receipt for all supplies, equipment and material.</p> <p>Supplies, equipment or material shall not be ordered or contracted for by the Supply Division unless the Comptroller shall certify that a fund is applicable for payment thereof.</p>
Advertising requirements	Bid solicitations are published in the City Journal. (Supply Division Vendor's Guide)
Security requirements – bids	Supply Commissioner may require certified check with bid. ( <u>Code</u> Title V, §5.58.020)
Security requirements – performance	Performance bonds may be required by the Supply Commissioner, who sets the amount, which is approved by the Mayor. ( <u>Code</u> Title V, §5.58.160)
Interviewee(s):	Rose Milina Neyland, Deputy Supply Commissioner 314.622.4585

## V. Comparative Analysis

### A. Charter language

This analysis is as focused on how procurement thresholds are set and changed as it is on comparing the actual monetary limits. We begin with a summary of only what the charter in each locality specifies.

#### Charter Provisions: Maryland localities

*(N/A = not addressed by the charter)*

Locality	Using agency direct purchasing w/o Purchasing	Purchasing Agent purchasing w/o higher authority	Formal (advertised) bid requirements	Publication of bid opportunities	Bid bonds	Performance bonds
Anne Arundel County	N/A	N/A	To be set by ordinance; maximum \$25,000	Purchasing agent to determine	N/A	Purchasing agent to determine
Baltimore City	N/A	\$5,000	To be set by ordinance	>\$25,000, 2 times in 2 newspapers	To be set by ordinance, bid specs or order or regulation of	Specifies when required

					using agency	
Baltimore County	N/A	N/A	To be set by ordinance	N/A	N/A	Purchasing agent to determine
Howard County	Amount to be set by Council	N/A	To be set by Council policies	N/A	N/A	N/A
Montgomery County	N/A	N/A	To be set by ordinance	N/A	N/A	N/A
Prince George's County	N/A	Multi-year contracts require Council approval	To be set by ordinance	Purchasing agent to determine	N/A	Purchasing agent to determine

Within Maryland, Baltimore City's charter includes far more prescriptive language than any other home rule locality examined. When their charters address the issues under investigation at all, they give the county's purchasing official or the County Council the power to set thresholds and determine bidding and contracting mechanics. None of the counties' charters include a numerical threshold, except as a part of an inaugural charter that empowered the legislative body to change the thresholds in the future. Anne Arundel County's ceiling on the formal bid threshold to be determined by the Council is the exception.



## Charter Provisions: Other U.S. Cities

(N/A = not addressed by the charter)

Locality	Using agency direct purchasing w/o Purchasing	Purchasing Agent purchasing w/o higher authority	Formal (advertised) bid requirements	Publication of bid opportunities	Bid bonds	Performance bonds
Atlanta	N/A	Purchases over \$300,000, not from lowest bidder, or made by other than competitive procurement require Council approval	To be set by ordinance	N/A	N/A	N/A
Cleveland	N/A	Council ordinance required for purchases above \$50,000; 2/3 Council vote required to raise	N/A	N/A	N/A	N/A
New York City	Threshold to be set by Commissioner of Citywide Administrative Services, up to \$5,000; higher threshold requires Comptroller approval (now \$100,000)	Purchases over \$5 million to be let by other than specified methods require Mayoral approval	Set by Procurement Policy Board and Council concurrently	Required publication in the City Record and elsewhere "as appropriate"; rules to be set by Procurement Policy Board	Set by Procurement Policy Board	N/A
Philadelphia	N/A	Contract renewal beyond one year requires Council approval	\$25,000 plus CPI adjustment every five years	Advertisement at least once a week for 2 weeks in one of 3 largest newspapers	Bid bond required as specified in bid solicitation	Performance bond required, terms set by Procurement Dept. and City Solicitor

### Charter Provisions: Other U.S. Cities (cont.)

*(N/A = not addressed by the charter)*

Locality	Using agency direct purchasing w/o Purchasing	Purchasing Agent purchasing w/o higher authority	Formal (advertised) bid requirements	Publication of bid opportunities	Bid bonds	Performance bonds
St. Louis	N/A	Purchases over \$5,000 require Board of Standardization approval	Over \$5,000	Advertising required except for emergency procurements	N/A	N/A

Among the other large cities examined, Cleveland and St. Louis have charter language that requires higher level approval of day-to-day procurements – in Cleveland by the Council and in St. Louis by the Board of Standardization. New York City gives substantial power to using agencies to procure goods and particularly services, up to thresholds set by Administration control agencies but not prescribed in the Charter. Its Procurement Policy Board is specifically prohibited from involvement in individual purchasing transactions (as was the former Board of Estimate). Philadelphia’s charter is relatively unspecific, vesting authority in the Council, the Executive’s Department of Procurement, and the City Solicitor. Atlanta’s charter contains even fewer specifics, but sets a dollar limit that restricts procurement over \$300,000 without Council approval.

The Cleveland charter requires that a charter review commission review the charter every 20 years. The 2008 Commission, appointed in January, met weekly and reported to the City Council in August. The Council approved all four of the procurement changes and voters ratified the changes on November 4, 2008; they became effective immediately. The changes included an increase in the threshold for Council approval from \$10,000 to \$50,000 (it was last changed in 1989), and empowerment of the Council to raise the limit in the future by two-thirds affirmative vote. The Department of Finance estimates that 200 pieces of legislation will be eliminated, and the procurement process reduced by an average of 20 weeks, lowering costs to both the City and the companies doing business with the City.

#### **B. Procurement thresholds**

For the record, the following table summarizes the procurement thresholds currently in force in the localities examined. These thresholds are set by a combination of charter provision, code, and regulations.

### Procurement Thresholds\*

Locality	Using Agency Purchasing Authority Limit	Procurement Director Purchasing Authority Limit	Competitive Formal Bid Threshold
Anne Arundel County	\$5,000	Unlimited	\$25,000
Baltimore City	\$1,000	\$5,000 unless transactions is approved by the Board of Estimates	\$25,000
Baltimore County	\$1,000	Over \$25,000 must be approved by County Exec or Council	\$25,000
Howard County	\$5,000	Unlimited	\$30,000
Montgomery County	\$5,000	Unlimited	\$25,000
Prince George's County	\$5,000	Unlimited, except multi-year	\$30,000
Atlanta	\$20,000	\$300,000	\$50,000
Cleveland	\$0	\$50,000	\$50,000
New York City	\$100,000	Unlimited	\$100,000
Philadelphia	\$5,000	Unlimited	\$25,000 + CPI adjustment
St. Louis City	\$500	Unlimited	\$5,000

*\*The thresholds listed here are general rules; all have exceptions and variations for different source selection methods.*

#### **C. Process for changing the procurement process**

Baltimore City and all Maryland home rule counties are bound by the Maryland Constitution provisions governing the amendment of charters (MD.Const.Art 11-A, §4; Article XI-A. Local legislation. §5. Charter amendments.

*Amendment of a locality's charter requires an ordinance of the legislative body or a petition signed by 20 percent of registered voters, approved by a majority of voters at the next scheduled election.*

The cities in other states have similar requirements for charter amendments – requiring passage of ordinances and ratification by voters – but vary in their requirements for regular charter review.

All but St. Louis and Philadelphia permit their local legislatures to establish thresholds for formal competitive bidding.

## **VI. Implications for Baltimore**

This examination of the legal underpinnings of the procurement process in Maryland and in other cities has led to the following observations about paths Baltimore City might take to addressing the multiple challenges of operating an equitable and efficient purchasing system.

### **The value of money over time**

Particularly when municipal charters are not regularly reviewed and updated, specific codified dollar amounts lose the relationship with economic conditions intended by the charter's framers over time as inflation comes into play. Five thousand dollars in 1986 has the buying power of \$9,741.24 in 2008.<sup>2</sup> Philadelphia has pegged one of its charter-specified thresholds to the Consumer Price Index; almost all the other localities' charters have given their legislative bodies or other specially created public entities the power to adjust these limits to changing economic conditions.

### **Efficiency**

Sluggishness in the purchasing system imposes costs on all parties: agencies that need goods and services in order to fulfill their public purpose are prevented from doing so in a responsive manner; citizens who depend on government services suffer; and companies (particularly small ones) that are seeking to participate in delivering government service incur the costs of uncertainty and delay, including missed opportunities, difficulty retaining workers, cash flow squeezes, and, in some cases, extended payment of interest on debt. Although the intent of some of the City's focused procurement goals is to support the growth of small, minority- and women-owned businesses, pursuing a City contract could be a liability rather than a boon. The Finance Department estimates that obtaining Board of Estimates approval adds at least two weeks to the award process. Small transactions are costly. In FY2007, 27 percent of requisitions submitted to the Bureau of Purchasing (BOP) were for contracts valued at \$5,000 to \$25,000, representing only eight percent of City dollars (\$20 million out of \$236 million) spent by BOP. The clear answer is to streamline the process, but efforts to do so, to the benefit of using agencies, citizens, and companies, are hampered by the inflexibility of a fixed charter requirement.

### **Transparency**

Through the unique institution of the Board of Estimates, the work of the City is done in public. While the Mayor has a majority of the vote, once a week, interested parties – including elected representatives of the people – have an opportunity to see in detail how the City is spending their tax dollars and other revenues, and to comment or protest if they desire. Other localities without Boards of Estimates have taken on the challenge of balancing the need for transparency in city government with the need for efficiency in several ways. As purchasing goes electronic, it becomes possible to allow all who wish to see to view the flow of contracts authorized by the locality. When these systems operate in

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<sup>2</sup> Inflation Calculator, Consumer Price Index homepage, <http://www.bls.gov/CPI/>

close to real time, the possibility of challenging an approved purchase before it is executed becomes a reality. Several jurisdictions require the advertising of their intent to award sole source contracts for this purpose.

Atlanta's charter requires that the chief procurement officer report information on contracts to the Council president and members monthly, including (1) The titles of all requests for proposals and the method of source selections to be used; (2) All contracts authorized by the council, the method of source selection used and the total dollar amount; (3) All contracts authorized by the chief procurement officer pursuant to subsection 2-1140(2), the method of source selection, as well as all emergency procurements pursuant to section 2-1192. (4) All change orders of contract modifications authorized by the council, the dollar amount, and the reason; (5) All change orders or contract modifications authorized by the chief procurement officer pursuant to subsection 2-1292(a)(1), the dollar amount, and the reason; (6) An explanation of any changes, and the costs involved, in the scope of services made between the time an award recommendation for a contract is made and the time that a resolution authorizing the contract is sent to the council for adoption.

Baltimore County's charter requires that whenever a contract is awarded by a process other than competitive bidding, a copy of the contract be given to the County Council, where it is formally announced at the next session and recorded in the Council's permanent minutes. Philadelphia requires quarterly reporting of non-competitively bid contracts to the City Council.

New York City's code prescribes an online database, the operation of which is reviewed by the mayor and the comptroller to ensure that the information required by the subdivision of the Code is maintained in a form that will enable each of them, and agencies, New York city affiliated agencies, elected officials and the council, to utilize the information in the performance of their duties. The data base contains information for every franchise and concession and every contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, entered into by an agency, New York city affiliated agency, elected official or the council, including, but not limited to: (1) the name, address, and federal taxpayer's identification number of the contractor, franchisee or concessionaire where available in accordance with applicable law; (2) the dollar amount of each contract including original maximum and revised maximum expenditure authorized, current encumbrance and actual expenditures; (3) the type of goods or services to be provided pursuant to the contract; (4) the term of the contract, or in the case of a construction contract the starting and scheduled completion date of the contract and the date final payment is authorized; (5) the agency, New York city affiliated agency, elected official or the council that awarded the contract, franchise or concession and the contract registration number, if any, assigned by the comptroller; (6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure, and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the

general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder; and (7) the date of any public hearing held with respect to the contract and the date and agenda number of action taken with respect to a concession or franchise by the franchise and concession review committee; and [(8) Reserved] (9) the contract budget category to which the contract is assigned, where applicable.

In Philadelphia, procurement reform in 2005 included a requirement that any City Agency that seeks to enter into a Non-Competitively Bid Contract publish on the City's official website and file with the Procurement Commissioner, the Finance Director and the Commerce Director a notice of the availability of such contracting opportunity, and award such contract only to a party that completes an application form supplied by such City Agency, which application form shall contain all disclosure forms required [particularly with regard to campaign contributions made by the vendor, related companies, and family members]. The required notices must appear on the City's official website for at least fourteen days before the time by which application forms must be filed....The required notices must be available for public inspection in such registries at least fourteen days before the time by which application forms must be filed. After the City Agency has selected the Applicant with which it intends to contract, the City Agency must publish a notice on the City's official website setting forth the names of all Applicants, the Applicant to which the contract will be awarded, and the basis for the award, including a statement as to whether the Applicant to be awarded the contract was the lowest bidder and if not, why the applications of all lower bidders were rejected. Such notice must appear on the City's website for at least one week before the contract is executed. (Philadelphia Code, § 17-1403)

A "real time" system for reporting procurements that do not go to the Board of Estimates under a raised threshold may not provide the ringside seat of the weekly Board meeting, but can keep the public window into the process open.

### **Access and equity**

Previous research done by this author for the Annie E. Casey Foundation and Associated Black Charities found that many of Baltimore's African American-owned companies view government programs as a "license to subcontract," both because of the way they are regarded by prime contractors, and the structure/size of the procurements themselves. The smallest contracts are not only most costly to the government, but also least profitable to small companies, which experience comparable transaction costs. Subcontracts on these small contracts are even less appealing.

Most of the localities examined are relying increasingly on electronic means of advertising bidding opportunities, even though most of them had not yet taken the next step to accept bids on line. Like Baltimore City's CitiBuy, these systems also make it possible for vendors who register to be made aware regularly of relevant opportunities, rather than needing to continuously check the bid board.

Security requirements also affect access to government contracts for small businesses. Most of the localities examined provide their procurement and legal specialists the opportunity to flexibly design bid and performance security requirements, in several cases specifically advantaging their local companies.

### **Mayor/Council**

In a strong-mayor system such as Baltimore's, where the Mayor has by charter the majority of the appointees to the Board of Estimates and in practice a working majority of supporters in the City Council, it is difficult to ensure that the City Council has a voice in any changes proposed to the procurement process. One way to accomplish this objective would be to require a two-thirds majority affirmative vote of the Council to change procurement thresholds, if they were removed from the Charter.