

FROM

NAME & TITLE	Rudolph S. Chow, Director
AGENCY NAME & ADDRESS	Department of Public Works 200 N. Holliday Street, 6 th Floor
SUBJECT	Rules for Qualification of Contractors, Performance Evaluations of Construction Contractors and Consultants and Procedures and Guidelines for Hearings Before the Office of Boards and Commissions Review Committee

84-108

CITY of
BALTIMORE

MEMO



DATE:

TO

The Honorable President and Members
of the Board of Estimates

November 21, 2016

ACTION REQUESTED OF BOARD OF ESTIMATES:

The Department of Public Works respectfully requests that the Honorable President and Members of the Board of Estimates approve the *Rules for Qualification of Contractors, Performance Evaluations of Construction Contractors and Consultants and Procedures and Guidelines for Hearings Before the Office of Boards and Commissions Review Committee* regarding prequalification and contractor/consultant performance reviews.

BACKGROUND/EXPLANATION:

On December 17, 2014, the Board of Estimates ("Board") approved the creation of the Office of Boards and Commissions Evaluation Committee ("Committee") to replace the Contractor Qualification Committee and oversee the operations and functions of the Office of Boards and Commissions ("OBC") (approval attached hereto as Exhibit A). OBC's operations are currently governed by the *City of Baltimore Rules for Qualification of Contractors* (the "Qualification Rules", Board approved October 30, 1991) and the *Guidelines for the Performance Evaluation of Design Consultants and Construction Contractors* (the "Evaluation Guidelines", Board approved April 28, 2004). The Board empowered the Committee, subject to Board approval, to review and amend the Qualification Rules and Evaluation Guidelines or enact such new rules and procedures as might be necessary to the operations and functions of OBC and the Committee. The Committee has determined that the existing rules governing OBC and Committee hearings on prequalification and contractor/consultant performance should be replaced and new rules enacted in their place. Pursuant to the authority granted by the Board, the Committee has promulgated the *Rules for Qualification of Contractors, Performance Evaluations of Construction Contractors and Consultants and Procedures and Guidelines for Hearings Before The Office of Boards and Commissions Review Committee* ("Rules and Guidelines"), attached hereto as Exhibit B, which shall supersede and replace the existing rules and guidelines currently set forth in the Qualification Rules.

Comments from representatives from the construction contractor and the design consultant community were solicited and considered by the Committee. The methods used to prequalify contractors have been updated to reflect a more thorough examination of potential contractors for the City of Baltimore. The Committee, acting either as a Committee or through a Hearing Officer appointed by the Committee Chair, shall be governed by the Rules and Guidelines in all hearings that are requested by consultants/contractors dissatisfied with any recommendations by the Committee and OBC relating to contractor/consultant performance and

contractor qualification. The Rules and Guidelines provide contractors and consultants a full, fair, and evidentiary hearing.

These Rules and Guidelines shall be effective immediately upon Board approval. Upon Board approval, a copy of the Rules and Guidelines will be sent to each design consultant and construction contractor prequalified with the City of Baltimore and shall be referred to and incorporated within all future design and construction contract specifications.


Rudolph S. Chow
Director

APPROVED BY THE BOARD OF ESTIMATES:

Bernice N. Taylor
Clerk Date NOV 30 2016

cc: Mayor Stephanie Rawlings-Blake

CITY OF BALTIMORE

**RULES FOR QUALIFICATION OF CONTRACTORS, PERFORMANCE
EVALUATIONS OF CONSTRUCTION CONTRACTORS AND CONSULTANTS AND
PROCEDURES AND GUIDELINES FOR HEARINGS BEFORE THE OFFICE OF
BOARDS AND COMMISSIONS REVIEW COMMITTEE**

PREAMBLE

The Guidelines and Procedural Rules for the Performance Evaluation of Design Consultants and Construction Contractors ("Guidelines") were approved by the Board of Estimates (the "Board") on April 28, 2004 and the Office of Boards and Commissions ("OBC") was charged with responsibility for implementation of the Guidelines and Procedural Rules for the Performance Evaluation of Design Consultants and Construction Contractors. OBC, which was also responsible for enforcing the Board's rules, regulations and standards for the prequalification, requalification and disqualification of contractors, was under the oversight of the Contractors Qualification Committee (approved by the Board on October 30, 1991). The Contractors Qualification Committee was abolished by Board action on December 17, 2014, and reconstituted as the Office of Boards and Commissions Review Committee ("Committee"). The Committee was charged with full authority to oversee the operations of OBC in regard to the performance evaluation of consultants and contractors and all matters relating to prequalification, requalification and disqualification of contractors and consultants. The Committee was expressly empowered to amend such existing rules as were appropriate to the operation and duties of OBC and the Committee, subject to Board approval. Pursuant to that authority, the Committee has promulgated the following revised Rules for Qualification of Contractors, the Guidelines and Procedural Rules for the Performance Evaluation of Consultants and Construction Contractors and the Procedures and Guidelines for Hearings before the Office of Boards and Commissions Review Committee, all of which are hereby adopted by the Board. These amended rules and guidelines replace and supersede in their entirety all prior rules and guidelines approved by the Board on October 4, 1991 and April 28, 2004 and are applicable to all contracts entered into after the date of their approval by the Board.

I. RULES FOR QUALIFICATIONS OF CONTRACTORS

1.1 Office of Boards and Commissions

1.2 The Committee shall have oversight of OBC and shall be the administrative arm of the Board in all matters relating to the prequalification, requalification, suspension, disqualification and increase in or reduction of ratings of contractors and the maintenance of eligibility lists thereof, provided that no action taken shall be effective until ratified and confirmed by the Board.

1.3 OBC shall review the applications for prequalification or requalification filed by persons, partnerships, or corporations, whether prime contractors or subcontractors ("contractors"), desiring to bid on or perform contracts in amounts in excess of Fifty Thousand Dollars (\$50,000.00) for construction, maintenance, repair, or demolition of physical facilities to be awarded by the City for any department, bureau, or agency thereof, or for any agency all or part of whose funds are supplied by said City ("City work").

1.4 Prequalification or requalification of consultants shall be in accordance with the City of Baltimore Resolution Relating to Architectural & Engineering Services approved by the Board of Estimates on June 29, 1994

1.5 Legal counsel to the Committee and OBC shall be provided by the City Law Department.

2.0. Bid Compliance Reports

2.1 Each City agency receiving bids for publically procured projects shall be required to submit written reports to OBC, on forms to be furnished by OBC, regarding any non-compliance by bidders with the bidding rules and procedures mandated by the laws and regulations of the City of Baltimore ("Bid Compliance Reports") which results in a bid being rejected. The Bid Compliance Reports shall contain the following:

2.1.1. the name of the rejected bidder.

2.1.2. the project/contract number and brief description.

2.1.3. the date of the bid rejection.

2.1.4. the detailed reason for the rejection.

2.1.5. if the bid rejected was the low bid, a statement whether the bid was awarded to the second or any subsequent bidder or the project re-bid. If awarded to another bidder the price differential between the rejected bid and the bid awarded shall be listed.

2.1.6. a statement whether the bidder had previously submitted a bid for the same project and what action was taken on the bid.

2.1.7. a statement of how many times in the one (1) year period preceding the rejected bid a bid from the same bidder had been rejected.

2.2 A separate Bid Compliance Report for each Bidder shall be submitted to OBC within thirty (30) days of the date of bid rejection.

2.3 OBC shall maintain the Bid Compliance Reports for three (3) years and shall make them freely available to authorized agency representatives upon request. Other than requests by authorized agency representatives, the Bid Compliance reports shall be maintained in confidence by OBC.

3.0. Requirements for Qualification

3.1. All prime contractors intending to bid on any City work in excess of Fifty Thousand Dollars (\$50,000.00) shall annually establish proof of their qualification for the work they propose to perform before being permitted to submit a bid. Prime contractors also must

be prequalified at the time of bid opening, bid award, and when work commences and remain prequalified for the duration of the project. Possession of a valid Certificate of Prequalification is deemed proof of qualification.

- 3.2. Subcontractors intending to perform City work in excess of Fifty Thousand Dollars (\$50,000.00) shall qualify in the same manner as prime contractors and such qualification must be established before they are permitted to commence work. Prime contractors shall be qualified in all classifications of work not performed or intended to be performed by subcontractors on a particular contract.
- 3.3. Generally, a contractor requesting prequalification to perform City work must:
 - 3.3.1. Possess net working capital sufficient to undertake and conduct the dollar capacity of work; and
 - 3.3.2. Possess and/or have available sufficient equipment appropriate to perform the classifications of work proposed, or possess net current assets adequate to purchase or lease the necessary equipment; and
 - 3.3.3. Have previous satisfactory work performance with the City and/or satisfactory experience elsewhere which can be verified so as to be acceptable to OBC, and if the contractor is a newly formed corporation or firm, the previous work performance and/or experience of its owners, officers and/or principal employees shall be considered; and
 - 3.3.4. Comply with all laws and regulations governing business relations with the City, including, but not limited to, requirements covering Minority and Women-Owned Business Enterprise participation goals (Baltimore City Code, Article 5, Subtitle 28), Equal Employment Opportunity (Mayor's Executive Order, Jan.1, 1977), Employment Practices and Minimum Wage (Baltimore City Code, (1976 Edition, as amended), Article 4, Section 10 and Article 19, Section 61 *et. seq*); and
 - 3.3.5. Not have had two or more bids in the course of one (1) year rejected for failure to comply with the bidding requirements of the City of Baltimore, the Mayor's Office of Minority and Women's Business Opportunity Office or any state, federal or City of Baltimore requirement applicable to City procurements.
- 3.4. A contractor with no previous work performance and/or experience may be prequalified for limited amounts and classifications of work, based on the previous performance and experience of its officers and/or principal employees. Subsequent work performance

shall serve as a basis for further qualification, if other prequalification requirements are met.

- 3.5. Only contractors prequalified by these Rules shall be entitled to purchase documents for bidding purposes. Any other individual may purchase documents stamped **"SAMPLE – NOT FOR BIDDING PURPOSES."**
- 3.6. Unless prequalification is suspended or revoked by OBC for cause, in accordance with Rule 12.2. of these Rules, prequalification is valid for two (2) years after Board approval. No later than the one year anniversary date of Board approval of prequalification, the contractor must submit a new financial statement that complies with Rule 5.0 *et seq.* of these Rules. Failure to file the financial statement may be used by OBC to disqualify the contractor in accordance with Rule 12.0 *et seq.* of these Rules.
- 3.7. Joint ventures will be considered for prequalification as a single entity by evaluating the qualifications of the individual co-venturers, each of which must be prequalified by OBC. Documents establishing the joint venture as an entity must be provided with the application. In the event that the joint venture is formed as a corporation, limited liability corporation, limited liability partnership or limited partnership, the joint venture shall be registered and qualified to conduct business in Maryland and shall be in good standing with the state Department of Assessments and Taxation. If any co-venturer is not or cannot be prequalified, the joint venture will not be prequalified and may not purchase documents for bidding until such time as all co-venturers are prequalified.

4.0. Procedure for Prequalification of Prime Contractors/Subcontractors

4.1. Each contractor desiring to bid for or perform City work shall file with OBC a written application for prequalification on a form prescribed and furnished by OBC. Such application shall be submitted under Oath, signed and, if submitted by a corporation, sealed. Information shall be furnished relating to:

4.1.1. Specific classifications of work proposed.

4.1.2. Financial responsibility, including an audited, compiled or reviewed financial statement dated within the last 12 months and as more specifically described in Paragraph 5, below.

4.1.3. Adequacy of facilities and equipment.

4.1.4. Prior work performed for the City and others. Details shall be complete, including type of work, for whom work was performed (naming City Department or Agency), contract amounts and dates of completion. Contractors may be required to furnish the educational and experience backgrounds of the owners, officers and/or principal employees of the company.

4.1.5. Equal Employment Opportunity and Affirmative Action Requirements as adopted by the City of Baltimore.

4.1.6. Such other pertinent information, guarantees and affidavits as OBC may prescribe.

4.1.7. All applicable licenses and/or certifications related to the category of work to be performed.

4.1.8. All Bids submitted by the Bidder to the City, or to other jurisdictions, which were rejected for any violation of the City's or other jurisdictions' procurement rules or procedures within the one year period prior to the date of the application for prequalification or requalification. Contractor shall submit a written statement, under oath and the penalties of perjury, identifying the jurisdiction to which the bid was submitted and providing detailed reasons for the rejection. For purposes of this section, if the City or another jurisdiction rejected all bids, including the Bidder's, for budgetary reasons or because rejection of all bids was deemed to be in the best interests of the City or the other jurisdiction, such action need not be disclosed by the Bidder.

4.2. A statement shall be furnished as to the type, model, year of manufacture, current book value and condition of each piece of owned or permanently leased equipment and all facilities related to the proposed classifications of work.

4.3. All contractors are required to maintain a level of satisfactory performance on each contract for any construction, maintenance, repair or demolition of physical facilities for the City of Baltimore or for any agency thereof. Prime contractors will be responsible for the performance of their subcontractors

4.4 Any application not completed within 60 days of the submission of the application to OBC shall be deemed invalid and require a new application to be submitted. Any fees submitted with the application shall be forfeited.

4.5 If an individual is doing business under a name other than his or her own, he or she must report same as part of the application.

4.6 Any required fees must be submitted with the written application in order for the application to be processed. Application fees are based upon the type of financial statement submitted and are as follows: \$100 for Compiled, \$500 for Reviewed, and \$1000 for Audited.

5.0. Financial Statement.

5.1. The application shall contain statements showing the financial ability of contractors. Such statements shall be prepared as of the end of the contractor's most recent fiscal year, as reported for the federal income tax purposes, unless otherwise requested or authorized by OBC upon the direction of the Committee. If the most recent fiscal year's financial information is unavailable, OBC may accept the previous year's financial information at its discretion.

5.2. The financial statement must be audited and accompanied by an independent accountant's report executed by a licensed Certified Public Accountant ("CPA") of any State, except that a reviewed financial statement accompanied by an independent accountant's report executed by a licensed CPA will permit consideration of a capacity rating not to exceed eight million dollars (\$8,000,000.00) and a compiled financial statement will permit consideration of a capacity rating not to exceed one and a half million dollars (\$1,500,000.00).

5.3. An accountant's report will not be accepted if prepared by a CPA who is an employee of, or who has a substantial financial interest in, the firm submitting the statement or any parent or subsidiary company.

5.4. The contents of a contractor's financial statement are confidential and shall not be available for inspection, unless otherwise provided by law, in accordance with the Maryland Public Information Act (Md. Ann. Code, Article 76A, Section 3(c)).

5.5. All documents submitted by a contractor, including financial statements and all calculations performed by OBC shall be available to the City Auditor for review.

5.6. An audited financial statement shall include a balance sheet, an income statement, a statement of changes in financial position, the report of independent accountants and all notes to financial statements.

5.7. A financial statement having an audited balance sheet, report of independent accountants and having unaudited income statement or other statements, shall not yield a work capacity rating of more than \$1.5 million.

5.8. The following financial statements will not be accepted by OBC:

5.8.1. A statement that does not include an income statement.

5.8.2. An audited or reviewed statement without the independent accountant's report or accompanying notes.

5.8.3. A statement, any portion of which appears in any way to be altered, removed, or the comments or work of someone other than the independent account who is reporting on the statement.

5.8.4. A draft or incomplete statement or a statement that covers less than a one (1) year period.

6.0. Capacity Rating.

6.1. A combined or consolidated financial statement must be accompanied by a written statement by the independent accountant or other person who prepared or audited the financial statement that all inter-company transactions have been eliminated. Such financial statement must also separately show the financial information for the contractor making application or must be accompanied by an additional document prepared by the independent accountant or by an officer of the parent corporation showing the portion of current assets and current liabilities applicable to the applying contractor. An assigned work capacity rating will be based on:

6.1.1. The net working capital assignable to the applicant contractor based on their financial presentation; and/or:

6.1.2. The appropriate portion of the net working capital assignable to the parent company when accompanied by an approved guarantee executed by the parent on behalf of the applicant.

6.2. If a capacity rating is determined by combining financial statements from more than one entity (such as company plus the personal statement of the guarantor stockholder), each statement must first be considered separately and a rating determined for each statement based on the net working capital, the ten times multiple and the type of statement (compilation, review, audit). The contractor's capacity is the total of the ratings for each separate statement.

6.3. A joint venture or partnership will be considered for a capacity rating not to exceed the combined capacity rating of its participants.

6.4. A contractor whose financial statement has a positive net working capital yielding a capacity rating of less than the value established necessary for prequalification (\$50,000.00) will not be approved for prequalification.

6.5. The financial statement shall be used by OBC to determine the Contractor's net working capital in accordance with generally accepted accounting principles and shall further set forth other financial data as requested by the OBC or the Committee.

6.6. The net working capital, determined under Rule 6.1 may be modified by the Committee on the basis of all available financial data. OBC shall then establish an assigned net working capital value for each contractor which shall be ten (10) times the assigned net working capital value based upon established criteria and policies. Contractors must be able to achieve a capacity rating that is greater than or equal to the minimum value for which prequalification is required.

6.7. A capacity rating higher than that established by Rule 6.1 may be assigned a contractor based on a blanket guarantee by a Guarantor which covers the period of the contractor's certification.

6.8 A prime contractor may purchase documents for bidding purposes and may be permitted to bid for any single contract having a total value not exceeding the contractor's assigned capacity rating. A prime contractor shall not be permitted to bid for a contract having a value in excess of said capacity rating, except as provided by Rule 7.0. The contracting Agency may elect to distribute bidding documents at no charge, in which case the bidder is required to be prequalified at the time of bid opening. In unique situations, the contracting agency may choose to waive the capacity rating as a requirement on a particular project provided the firm is able to obtain the appropriate performance bond. A justification for the waiver of the capacity rating requirement must be submitted to OBC prior to the bid date and after being reviewed and approved by OBC and Law.

6.9 A prime contractor shall not be awarded a contract if the total contract value (including all work classifications), when added to the contractor's uncompleted backlog of work (both work-in progress and work yet to begin) at the time of award, including amounts sublet or to be sublet and considering that which is contracted or subcontracted for with the City and elsewhere, including the full amount of any joint venture, exceeds the contractor's assigned capacity rating, except as provided by Rule 7.0. A subcontractor shall not be permitted to commence work if the subcontract value (including all work classifications), when added to the subcontractor's uncompleted backlog at time of commencement, including amounts sublet or to be sublet and considering that which is contracted or subcontracted for with the City and elsewhere, including the full amount of any joint venture, exceeds the subcontractor's assigned capacity rating, except as provided by Rule 7.0. If the prime contractor or subcontractor has engagements in joint ventures, the uncompleted backlog of work for the entire project must be factored in to its capacity statement.

7.0. Financial Performance Guarantee

7.1 In cases where the assigned capacity rating is insufficient under Rules 6.1 and 6.2, a prime contractor may be permitted to bid or may be awarded a contract and a subcontractor may be permitted to commence work if a specific guarantee of the contractor's obligations in connection with the particular contract is furnished by the contractor's guarantor. The maximum amount of a guarantee furnished on behalf of a contractor or subcontractor pursuant to this Rule shall not exceed five (5) times the contractor's or subcontractor's current work capacity rating; unless OBC, for good cause and in its sole discretion, approves a guarantee which exceeds five (5) times the contractor's or subcontractor's current work capacity. The financial responsibility of a guarantor shall be evaluated by OBC in the same manner as a financial statement under these Rules. Each guarantee shall be approved by OBC and the Law Department of Baltimore City for the particular contract and furnished to the contracting agency upon request. The guarantor shall submit such additional information documentation as may be necessary for the analysis of the specific guarantee.

7.2. A blanket guarantee is used primarily by parent companies or by the owners and officers of companies to give a contractor rather broad financial guarantee support for a given time period. The specific guarantee is primarily used by prime contractors and others to give financial guarantee support for a smaller contractor on a particular contract.

7.3. A guarantee may only be submitted by a person or entity having sufficient resources and proper authority to guarantee. Letters of reference and other supporting data submitted by bonding companies, banks and various agencies or organizations are not acceptable as a form of guarantee.

7.4. A guarantor must submit financial data to support any guarantee in the same manner as if applying for qualification unless sufficient current financial data is already on file with the Committee. The financial responsibility of a guarantor shall be evaluated by the Committee in the same manner as a financial statement under the Rules for Qualification of Contractors.

7.5. A contractor must be otherwise currently qualified or eligible for qualification in all respects, including having a satisfactory performance rating, in order to receive an increased work capacity rating through a guarantee. Any request for guarantee approval for a contractor who is not qualified or eligible to be qualified must be rejected and referred back to the requesting guarantor through the appropriate City agency.

7.6. A blanket guarantee only increases a contractor's work capacity rating and does not permit the contractor to perform any work classifications not previously assigned.

7.7. A specific guarantee only permits a contractor to work in excess of the assigned work capacity rating and does not permit the contractor to perform any work classifications not previously assigned.

7.8. Each guarantee shall be submitted in such form and with such accompanying acknowledgements, endorsements, approvals, and signatures as may be required by the Board of Estimates. The guarantee shall also include any terms and provisions concerning technical, managerial, financial or other assistance to be provided to the contractor by the guarantor,

7.9. A contractor whose work capacity rating is increased by a blanket guarantee will be submitted to the Board for prequalification in the increased rating amount. A contractor proposed to work under a specific guarantee will be submitted to the Board for its information.

7.10. The work capacity rating of a qualified contractor who also acts as a blanket guarantor for one or more other contractors will be reduced by the amount of all outstanding blanket guarantees made by the qualified contractor.

7.11. The work capacity rating of a qualified contractor who acts as a specific guarantor for one or more subcontractors working for and under that contractor will be reduced by the amount(s) of the specific guarantee(s).

7.12. Guarantees are only valid for the duration of the contractor's initial period of prequalification and must be renewed upon prequalification renewal.

7.13. The assigned capacity rating shall be reduced in the event of a reduction in the Contractor's net working capital, failure to pay bills in due course, unjustified demand for extra payment, or whenever any factor upon which the rating was based shall have materially changed for the worse.

8.0. Processing Applications & Review by the Board of Estimates

8.1. A prime contractor must file its application for prequalification not less than thirty (30) days prior to the bid opening date specified in the contract proposal. A subcontractor shall file not less than 30 days prior to commencing work. OBC may waive the 30 day period at its discretion. However, submitting applications within the established timeline does not guarantee prequalification certification prior to bid opening or work commencing.

8.2. All prequalified contractors may continue prequalification by submitting a renewal application not less than 30 days prior to the date of certificate expiration. OBC may waive the 30 day period at its discretion.

9.0 Period of Consideration.

9.1. During the period of consideration of the application (i.e., from time of application to the Committee's recommendation to the Board), an applicant may be required to appear personally before OBC to furnish additional information and/or to open its facilities, equipment or books for OBC inspection. OBC shall then recommend to the Board that an established capacity rating determined in accordance with Rule 6.1 and certain work classifications be approved.

9.2. OBC shall review any Bid Compliance Reports submitted to it pursuant to section 2.0 of these Rules pertaining to the applicant and shall review all reports received from the applicant pursuant to 4.1 of the Rules in determining whether an applicant should be recommended for prequalification or renewal of an existing certificate of prequalification. Should OBC find that two (2) or more Bid Compliance Reports were issued in a one (1) year period or less for the applicant, OBC may use that information as a basis for refusal to recommend prequalification, renew qualification, recommend suspension of qualification, or impose a monetary fine against the bidder in an amount not to exceed One Thousand Dollars (\$1,000.00). OBC may make such recommendations, subject to review by the Committee, even in the event that the contractor satisfies the other requirements for prequalification.

10.0 Notification of Proposed OBC Action.

- 10.1. Written notification of any action proposed to be taken by OBC shall be provided to the applicant in accordance with the Procedures and Guidelines for Hearings before the Office of Boards and Commissions Review Committee, Section III herein. As further provided in Section III herein, upon written request, a hearing, before the Committee or a hearing officer appointed by the Committee, shall be afforded any contractor who is aggrieved by any proposed or recommended action by OBC.

11.0. Miscellaneous Provisions

- 11.1. Upon final action by the Board in prequalifying a contractor, OBC shall issue to the contractor a Certificate of Prequalification. The assigned capacity rating, the approved work classification(s) and the certificate expiration date shall be stated on said Certificate.
- 11.2. Any contractor who has been refused requalification may file a new application six (6) months following final action of OBC on the previous application.
- 11.3. Any contractor who has been prequalified for a lower rating or classifications other than requested or who has been disqualified may submit additional information to the Committee at the Committee's discretion. After appropriate review the Committee may direct OBC to recommend to the Board that the contractor be issued a new or amended Certificate.
- 11.4. A current list of prequalified contractors, with their capacity rating, work classifications and Certificate expiration date is available for inspection through the Minutes of the Board of Estimates, Room 204 City Hall, online, or through the OBC. The disclosure of any other information is subject to provisions of the Maryland Public Information Act (Md. Ann. Code, Article 76A, Section 1-5).

12.0. Disqualification of Contractors

- 12.1. A Certificate once issued shall be valid until its expiration date unless it is suspended or revoked by OBC for cause, in accordance with the Rule 12.2. In such cases, the contractor shall be notified in writing of the proposed action to be taken and given an opportunity for a hearing on such action by the Committee.
- 12.2. The following acts, in combination or standing alone, shall be considered grounds for revocation of a Certificate or suspension thereof for a period of time at OBC's discretion, not to exceed two (2) years, or to impose a monetary fine against the bidder in an amount not to exceed One Thousand Dollars (\$1,000.00), subject to review by the Committee and approval by the Board:

12.2.1. Submission of falsified or inaccurate financial or experience statements or other data upon which qualification is based.

12.2.2. Failure to submit a new financial statement or other pertinent data affecting a Contractor's continued qualification or eligibility.

12.2.3. Undertaking additional work in excess of the capacity rating after a contractor has been awarded a City contract.

12.2.4. Failure to maintain satisfactory performance.

12.2.5. Conviction of bribery, extortion, fraud or similar malfeasance.

12.2.6. Failure to secure bonding.

12.2.7. Failure to comply with applicable federal, state, and local laws, executive orders and rules.

12.2.8. Failure to pay subcontractors and/or suppliers.

12.2.9 Failure to remedy any City fines or fees accrued.

12.2.10 Falsifying information in the prequalification application.

12.2.11. Any behavior or conduct that OBC, in its sole discretion, concludes reflects negatively on the contractor's integrity or which is determined by OBC to be so serious as to affect the integrity of the procurement process.

12.2.12. Debarment or other sanctions levied against the contractor by any federal, state, or local government.

12.2.13 Having two (2) or more bids in the course of one (1) year rejected by the Board of Estimates for failure to comply with the bidding requirements of the Green Book, the Mayor's Office of Minority and Women's Business Opportunity Office or any state, federal or City of Baltimore requirement applicable to City procurements.

12.3 Grounds for revocation or suspension shall be also grounds for refusal of an original or renewal application.

12.4 Written notification of any action proposed to be taken by OBC shall be provided to the contractor in accordance with the Procedures and Guidelines for Hearings before the Office of Boards and Commissions Review Committee, Section III herein. As provided in Section III herein, upon written requests, a hearing before the Committee or a hearing officer appointed by

the Committee shall be afforded any contractor who is aggrieved by any proposed or recommended action by OBC.

12.5. Any contractor not holding a valid Certificate shall be prohibited from bidding on or performing any City of Baltimore construction contracts of any size or dollar value during the period of disqualification.

II. GUIDELINES AND PROCEDURAL RULES FOR THE PERFORMANCE EVALUATION OF CONSULTANTS AND CONSTRUCTION CONTRACTORS

1.0. Office of Boards and Commissions

1.1. The Office of Boards and Commissions Review ("Committee"), acting by and through personnel from the Office of Boards and Commissions ("OBC"), shall be the administrative arm of the Board of Estimates ("Board") in all matters relating to the performance evaluation of design consultants and construction contractors. Any recommendation by OBC, made in compliance with these rules regarding performance evaluations, shall be subject to final review by the Committee as provided herein.

2.0. Procedure for Consultant Performance Evaluation

2.1. Written Evaluations

2.2. Each consultant doing business with the City of Baltimore, whether as the prime consultant or a sub-consultant will be evaluated by the City Department or Agency that contracted with the consultant. Evaluations will be prepared for each phase of a project on which the consultant performs any work. The personnel performing the evaluation shall be selected by the Department or Agency Head and may include one or more individuals with a limit of three (3), each of whom must have familiarity with the project for which a rating is being issued and have knowledge of the work being performed by the consultant being rated.

2.3. In the event that a joint venture is selected as either a prime or sub-consultant, the joint venture will be evaluated as a single entity. In the event that the evaluation process results in action being taken to disqualify or otherwise sanction a joint venture in accordance with these performance evaluation rules, the disqualification or other sanction shall apply to the joint venture and to each of the co-venturers comprising the joint venture.

3.0. Procedure for Construction Contractor Evaluation

3.1. Written Evaluations

3.2. Each construction contractor doing business with the City of Baltimore, whether as a prime contractor or a subcontractor, will be evaluated by the City Department or Agency that contracted with the contractor. Evaluations will be prepared for each project on which the

contractor performs any work. The personnel performing the evaluation shall be selected by the Department or Agency Head and may include one or more individuals with a limit of three (3) each of whom must have familiarity with the project for which a rating is being issued and have knowledge of the work being performed by the contractor being rated.

3.3. In the event that a joint venture is selected as either a prime or sub-contractor, the joint venture will be evaluated as a single entity. In the event that the evaluation process results in action being taken to disqualify or otherwise sanction a joint venture in accordance with these performance evaluation rules, the disqualification or other sanction shall apply to the joint venture and to each of the co-venturers comprising the joint venture.

4.0. Ratings Criteria

4.1. The personnel who perform the evaluations for consultants and contractors (collectively, the "Evaluators") shall provide an accurate evaluation of consultant and/or contractor performance for each project.

4.2. The Evaluators shall rate the consultant or contractor on criteria relevant to the area of their responsibility on the contract. Other criteria boxes shall be left blank.

4.3. Firms shall be rated only on criteria relevant to service areas that are required by contract to be performed. Scores will be calculated only upon those criteria rated by the panel. Criteria that are not rated will not lower an overall score.

4.4. Ratings range from "0" to the maximum assignable value.

5.0. Ratings Forms

5.1. The project rating system requires the utilization of one of two forms:

5.1.1. The "Consultant Ratings Form" (Appendix 1) is to be utilized to evaluate design and post award services;

5.1.2. The "Contractor Ratings Form" (Appendix 2) is to be utilized to evaluate construction services.

5.2. When executed, the Consultant Rating Form and the Contractor Rating Form shall be treated as confidential documents except as may otherwise be required by applicable law. Executed forms shall only be available upon request to the subject of the evaluation, the City Department or Agency issuing the evaluation, another agency head/director, OBC, the Committee and the Board of Estimates.

6.0. Scoring/Grading

6.1. The following scoring and grading system will be utilized to evaluate the performance of design consultants and construction contractors:

Percentage Points¹

90 - 100 - Excellent

77 -- 89 - Good

70 -76 - Marginal

69 or less -- Unsatisfactory

7.0. EVALUATION PERIOD FOR CONSULTANTS

7.1. Except as set forth in section 7.2 or 7.3, each Consultant will be rated quarterly, *i.e.*, every three months, including at project completion, via interim evaluations (the "Interim Evaluation"). At project completion, an overall Final Project Rating will be calculated by averaging all numeric ratings previously issued for that project. Final Project Ratings will be completed within sixty (60) days of project completion.

7.2. For projects involving preparation of plans, drawings and specifications that are followed by construction of the project and intended to be completed in less than one (1) year, the Consultant will be rated within 30 days of submission of completed plans and again within thirty days of the acceptance by the City of the completed project.

7.3. Projects involving plans or studies only or inspection services only will be rated one time as deemed appropriate by the Department or Agency utilizing the consultants' services.

8.0. EVALUATION PERIOD FOR CONTRACTORS

8.1. Except as set forth in section 8.2 or 8.3, each Contractor will be rated quarterly, *i.e.*, every three months, including at project completion, via interim evaluations (the "Interim Evaluation"). At project completion, an overall Final Project Rating will be calculated by averaging all numeric ratings previously issued for that contract. Final Project Ratings will be completed within sixty (60) days of project completion.

8.2. For projects intended to be complete within six (6) months to one (1) year, the Contractor will be rated at the project's mid-completion point via Interim Evaluation and upon project completion. The mid completion point shall be determined by the project manager based on the

¹ Ranking is based on scale of 100 percentage points, which is determined by dividing number of points awarded by number of possible points in categories in which a score was provided.

work performed and the projected schedule of remaining work. At project completion, a Final Project Rating will be calculated by averaging all numeric ratings previously issued for that contract. Final Project Ratings will be completed within sixty (60) days of project completion.

8.3. Projects requiring less than six (6) months to complete will be rated only at project completion, which rating shall constitute the Final Project Rating.

9.0. APPEAL PROCESS--CONSULTANTS AND CONTRACTORS

9.1. Each Interim and Final Project Rating will be made available to the subject consultant/contractor.

9.2. Consultants and/or contractors who object to any Interim or Final Project Rating may appeal to the Bureau Head/Division Chief/Office Chief, or such person's designee ("Appeal Evaluator") in writing within ten (10) days of receipt of the rating whether an Interim or Final Project rating. If no written appeal is received within the time required by these rules, the contractor/consultant will be deemed to have waived its right to review of the rating. The Appeal Evaluator shall consider the written submission of the contractor/consultant and the information contained in the ratings being appealed. No hearing shall be held. The Appeal Evaluator may request additional information from the contractor/consultant and such information shall be provided within five (5) days of the request.

9.3. The Appeal Evaluator shall render a written decision within thirty (30) days from the receipt of an appeal. The decision regarding an appeal of a rating is final.

9.4. The Appeal Evaluator's decision will be entered into a database maintained by OBC.

9.5. City agency personnel will have access to the rating database.

10.0 APPLICATION OF PERFORMANCE RATINGS FOR CONSULTANTS

10.1. All ratings for projects on which a Consultant has performed work shall be made available to City agency personnel serving on shortlisting and interview panels for their consideration in reviewing project specific proposals.

10.2. Consultant ratings shall be reviewed by OBC upon receipt of re-qualification application and submittals.

10.3. Consideration of a consultant's overall rating shall be made prior to any action being recommended by OBC to the Committee.

11.0. APPLICATION OF PERFORMANCE RATINGS FOR CONTRACTORS

11.1. All ratings of contractors shall be available to City agency personnel.

11.2. Contractor ratings shall be reviewed by OBC upon receipt of requalification applications.

11.3. Consideration of a contractor's overall rating shall be made prior to any action being recommended by OBC to the Committee.

12.0. RATINGS

12.1 EXCELLENT RATINGS

12.1.1. If, a Contractor achieves two consecutive "Excellent" Interim evaluations on a single project, the Contractor may request the City Department or Agency that the contractor is under contract with to reduce the retainage for the contract from 5% to 1.5% at the 50% completion milestone (as expressed in terms of monies earned excluding stored material.) This request must be accompanied by a document that indicates the approval of the project's Surety for the reduction in retainage. The Department or Agency shall determine whether to grant the requested reduction. Any Contractor aggrieved by the decision regarding reduction of retainage may request a hearing pursuant to Article VIII of these Rules.

12.1.2. The Contractor will remain eligible for this consideration by maintaining an "Excellent" rating.

12.2. GOOD RATINGS

12.2.1. If, a Contractor achieves two consecutive "Good" interim evaluations on a single project, the contractor may request the City Department or Agency that the contractor is under contract with to reduce the retainage for the contract from 5% to 3% at the 50% completion milestone as expressed in terms of monies earned excluding stored material. This request must be accompanied by a document that indicates the approval of the project's Surety for the reduction in retainage. The Department or Agency shall determine whether to grant the requested reduction. Any Contractor aggrieved by the decision regarding reduction of retainage may request a hearing pursuant to Article VIII of these Rules.

12.2.2. The Contractor will remain eligible for this consideration by maintaining a "Good" rating.

12.3 MARGINAL RATINGS

12.3.1. Contractors and/or consultants receiving a "Marginal" Interim rating will be notified in writing by the Appeal Evaluator that improvement in the firm's performance is required. After receipt of a Marginal Interim rating, should the contractor/consultant fail to improve its performance and receive a subsequent Marginal rating of any kind, the

contractor/consultant will be sent written notification by OBC that the firm's continued prequalification status is being evaluated. If upon review, OBC determines that further action is appropriate regarding the contractor/consultant's prequalification status, it shall notify the contractor/consultant in writing and advise the contractor/consultant of its right to a hearing in accordance with Section III, herein. If a hearing is requested by the contractor/consultant, the hearing shall be conducted in strict accordance with Section III. At the hearing, the contractor/consultant must demonstrate to the satisfaction of the Committee or Hearing Officer that its prequalification status should not be revoked, its work capacity rating not be reduced or it should not be subject to any other action taken by the Committee.

12.4. UNSATISFACTORY PERFORMANCE

12.4.1. Contractors and/or consultants receiving an "Unsatisfactory" Interim rating will be notified in writing by the Appeal Evaluator that improvement in the firm's performance is required. Should the contractor/consultant fail to improve its performance and receive a subsequent Interim or Final Project Rating of Unsatisfactory or Marginal, the contractor/consultant will be sent written notification from OBC that the firm's prequalification status will be reviewed. If upon review, OBC determines that further action is appropriate regarding the contractor/consultant's prequalification status, it shall notify the contractor/consultant in writing and advise the contractor/consultant of its right to a hearing in accordance with Section III, herein. If a hearing is requested by the contractor/consultant, the hearing shall be conducted in strict accordance with Section III. At the hearing, the contractor/consultant must demonstrate to the satisfaction of the Committee or Hearing Officer that its prequalification status should not be revoked, its work capacity rating not be reduced or it should not be subject to any other action taken by the Committee

III. PROCEDURES AND GUIDELINES FOR HEARINGS BEFORE THE OFFICE OF BOARDS AND COMMISSIONS REVIEW COMMITTEE

1.0. Hearings Generally

1.1. Where the Rules for Qualification of Contractors or the Guidelines for the Performance Evaluation of Design Consultants and Construction Contractors (collectively the "Rules") provide that a hearing may be conducted, these Procedures and Guidelines shall govern.

1.2. A hearing may be conducted by the full Committee or, at the Chair's discretion, by any individual member of the Committee designated to serve as the Hearing Officer by the Chair.

1.3. The objectives of a hearing are:

- To provide all interested parties an opportunity to be heard by the Committee or Hearing Officer
- To afford a contractor/consultant an opportunity for an impartial, objective review of proposed decisions and/or actions of the Committee
- To contribute to uniformity and consistency in the application and enforcement of the Rules
- To establish and consider facts and data related to:
 - a. a contractor/consultant's performance, nonperformance or other acts which are grounds for qualification, suspension or revocation of the contractor's Certificate of Prequalification; or
 - b. a contractor's financial and work capabilities.

2.0. Notice of Hearing

2.1. Where the Rules provide that a hearing may be held, the contractor/consultant shall be notified, in writing by OBC, of the action proposed to be taken by the Committee. Notice shall be sent to the contractor/consultant via first class mail, certified mail return receipt requested and by email, with a read receipt requested, to the email address of record for the contractor/consultant. Within five (5) days of the date of the notification, or the date of receipt by the contractor/consultant, whichever occurs first, the contractor/consultant may submit a written request for a hearing. E-mailed notification is effective as of the date of its transmission by OBC. Failure of the contractor/consultant to open an emailed notification will not extend the time allowed for filing a request for hearing. The contractor/consultant's request for a hearing shall be mailed via first class mail, and sent via electronic mail, to the Office of Boards and Commissions, 4 South Frederick Street, 4th Floor, Baltimore, MD 21202 (410) 396-6883, email address, obc.contractors@baltimorecity.gov. If no written request for a hearing is filed within the time required by these rules, the contractor/consultant will be deemed to have waived its right to a hearing and the Committee may proceed to evaluate the contractor/consultant's performance, nonperformance or other acts as the Committee deems appropriate. The Committee may also initiate a hearing.

2.2. The hearing shall be scheduled within a reasonable time after a request for a hearing is received. When a hearing is scheduled, OBC shall send a Hearing Notice to the contractor/consultant by first class mail and electronic mail requesting receipt confirmation. The Hearing Notice shall set the date, time and location of the hearing, and describe the purpose and nature of the hearing. OBC shall also send the Hearing Notice to the agency involved by email and inter-City mail to the agency Director. The Hearing Notice shall include a copy of these Procedures and Guidelines as well as any pertinent documents in the Committee's or OBC's possession, including any performance evaluations that have been filed by any agency. The Hearing Notice shall designate either a Hearing Officer to preside or advise that the hearing will be held before the Committee. The Hearing Notice will set firm times for:

- a. how long the contractor/consultant has to present its case;
- b. how much time for the agency to reply;
- c. how much time for cross examination and setting any limits on what will be allowed on cross examination;
- d. how much time for closing argument.

The Committee or Hearing Officer may shorten or extend any times set forth herein for good cause shown or as the Committee or Hearing Officer may direct in the exercise of their discretion. Any additional rules or procedures that may be required by the Committee or Hearing Officer shall be set forth in the Hearing Notice and are subject to amendment by the Committee or Hearing Officer.

2.3. Not later than five (5) days after the date of the Hearing Notice, the contractor/consultant shall advise OBC in writing, sent via first class mail and electronic mail, requesting receipt confirmation, whether it will or will not be represented by counsel at the hearing and, if it will be represented, identify its counsel. If the contractor/consultant will not be represented by counsel, the contractor/consultant will designate one representative to present its position, introduce documentary materials, call witnesses to support its position and cross-examine. Unless directed otherwise by the Committee, an attorney from the City Law Department shall be present at all hearings and may participate in the hearing, regardless whether the contractor/consultant elects counsel or not. Failure of the contractor/consultant to file a timely election of counsel shall be a waiver of the right to counsel at the hearing.

3.0. Rules of Evidence

3.1 Formal rules of evidence and formal trial procedures shall not apply.

3.2. The Committee or Hearing Officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may also exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

3.3. The Committee or Hearing Officer may take judicial notice of facts and in addition may take notice of general, technical, or scientific facts.

3.4. All evidence including records and documents in the possession of OBC, the Committee, the involved City agency or the City of Baltimore which the Committee or Hearing Officer desires to utilize may be made a part of the record in the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

4.0. Hearing Proceedings

4.1. The proceedings shall follow this order:

- a. The Committee or Hearing Officer shall begin the hearing with a statement concerning the purpose of the hearing and the procedures that will be followed.
- b. Each party may present its case by narrative or by witnesses.
- c. Cross-examination of any witness shall be permitted; however, the parties will not be permitted to argue or engage in debate. The Committee or Hearing Officer may limit or terminate cross examination at any time.
- d. The Committee or Hearing Officer may question any witness or party at any time.
- e. Each party may present its final arguments and summarize its position.
- f. Each party shall have the right to make any additional statements before the hearing is terminated.
- g. At the discretion of the Committee or Hearing Officer, the hearing may be adjourned to another date, continued or postponed.

4.2. Notwithstanding the procedures set forth above, the Committee or Hearing Officer may, in their discretion, decide the order and manner in which testimony and evidence is to be presented and have discretion to direct changes to the hearing procedure.

5.0. Decisions and Orders

5.1. Every attempt shall be made to render a final decision within thirty (30) days from the conclusion of the hearing. The decision shall be made based upon the facts and evidence introduced into the record. The final decision of the Committee need not be in writing. However, OBC shall prepare a memorandum of each hearing which contains the following information:

- a. date of hearing;
- b. type of hearing (Committee or Hearing Officer);
- c. name of person presiding;
- d. the contractor or consultant's name;
- e. the names, titles and affiliations of persons in attendance;
- f. the purpose and nature of the hearing;
- g. a brief description of documents, testimony and data presented;
- h. the final findings of the Committee or Hearing Officer; and
- i. proposed action by the Committee.

5.2. When hearings are conducted by a Hearing Officer, the Hearing Officer shall submit his/her decision in writing to the Committee for review and to the contractor/consultant. The Hearing Officer's decision must be approved by the Committee before the proposed action becomes final. The Committee may approve, reject or modify the decision of the Hearing Officer in its sole discretion. The Committee's decision is subject to review on the record by the Board of Estimates.

5.3. When hearings are conducted by the Committee, the Committee's decision is subject to review on the record by the Board of Estimates.

5.4. A copy of the memorandum of the hearing referred to in this Section shall be sent to the contractor/consultant or to his attorney of record simultaneously with notice of the Committee's determination.

6.0. Record of Proceeding

6.1. In the Committee or Hearing Officer's discretion a record of the proceedings may be made; a tape recording of the proceeding is adequate.

6.2. The contractor/consultant may have access to the tape recording during City business hours and may have a transcript made at its expense. The cost of the preparation of the transcript shall be paid before the transcript is prepared.

