

NOTICE OF ADOPTION OF RULES

Pursuant to the authority vested in the Procurement Policy Board by Section 311 of the New York City Charter (“Charter”) and in accordance with the requirements of Section 1043 of said Charter, the Procurement Policy Board has adopted amendments to Chapter 3 and Chapter 4 of Title 9 of the Rules of the City of New York. The amendments were published in the City Record on August 14, 2015, and a public hearing was held on September 14, 2015. The amendments were adopted by the Procurement Policy Board on October 21, 2015. These rules shall go into effect on March 1, 2016, at least thirty (30) days after its publication in the City Record, provided that §§ 1 and 4 of this rule, relating to amendments to subdivision (e) of section 3-02 and subdivision (d) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York, shall go into effect on July 1, 2016.

STATEMENT OF BASIS AND PURPOSE OF RULES

The Procurement Policy Board (“PPB”) hereby amends the Rules of the City of New York in six respects:

- **Emergency Procurements:** On December 30, 2013, Mayor Bloomberg signed into law Local Law 135 of 2013 to amend Section 315 of the New York City Charter (“Charter”) to provide notification to the New York City Council (“Council”) when agencies procure emergency goods, services or construction. The amendment to the City Charter requires agencies to provide the Council with the written determination of the basis for each emergency procurement and the selection of the contractor within fifteen days after contract award. This rule amends Chapter 3 of Title 9 of the Rules of the City of New York to reflect the changes made to Section 315 of the City Charter.
- **Extension of Time for Performance:** Chapter 4 of Title 9 of the Rules of the City of New York currently sets forth the requirements for the application and approval of time extension requests for contracts requiring construction, goods, and non-construction related services. This amendment permits all services contracts and task orders under task order contracts to be extended pursuant to the rule.
- **Investment Services:** In order to increase the use by New York City’s retirement systems of successful smaller investment managers, the amendment will permit one or more of the New York City retirement systems to use a negotiated acquisition mechanism in order to allow direct contracts with a vendor that has successfully provided investment management services to such system under an emerging manager program.
- **Public Notice:** The amendment requires that agencies email invitations for bids (IFBs), requests for proposals (RFPs) or notices of their availability to vendors unless a written request to receive such IFBs or notices of their availability by mail, fax, hand delivery, or otherwise is approved by the City Chief Procurement Officer (CCPO); and requires IFBs, RFPs or notices of their availability to include the email address of the agency contract person, if applicable. This rule includes electronic mailings as a manner in which invitations for bids and request for proposals are distributed. This amendment will go into effect on July 1, 2016.
- **Best Value:** New York State General Municipal Law § 103 was amended to permit purchase contracts to be awarded on the basis of best value. Best value is a basis for

awarding a contract for goods or standard services which optimizes quality, cost and efficiency among responsive and responsible bidders or offerors, reflecting, whenever possible, objective and quantifiable analysis. Pursuant to GML § 103 and State Finance Law § 163, such a basis may identify quantitative factors for offerors that are small businesses or certified minority- or women-owned business enterprises (M/WBE) when evaluating bids and offers. On April 8, 2013, the Procurement Policy Board (PPB) adopted amendments to Chapter 3 of Title 9 of the Rules of the City of New York to authorize the use of best value awards based on competitive sealed bids and competitive sealed proposals. PPB now further amends Chapter 3 to establish requirements for implementing quantitative factors for M/WBEs when evaluating bids and offers for awarding of contracts as per State Finance Law § 163(1)(j).

PPB's authority for these rules is found in sections 311 and 1043 of the New York City Charter.

The Rule Amendments:

New material is underlined and deletions are [bracketed].

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this board, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Subparagraph (i) of Paragraph (1) of Subdivision (e) of Section 3-02 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

(i) Distribution. IFBs or notices of their availability [shall] must be electronically mailed [mailed, faxed, hand delivered, or otherwise furnished] to a sufficient number of vendors, including all vendors on the appropriate citywide bidders list established by the CCPO for the purpose of securing competition. IFBs or notices of their availability may be sent electronically to vendors on agency-specific bidders lists, in addition to the appropriate citywide bidders list maintained by the CCPO, only with approval of the CCPO. Such IFBs or notices [shall] must be sent electronically at least fifteen (15) days in advance of the due date for bids, or at least twenty-two (22) days in advance of the due date for bids which are subject to §6-129 of the New York City Administrative Code (M/WBE and EBE program). An agency may, upon request of a vendor, provide IFBs or notices [electronically] by mail, fax, hand delivery, or otherwise. Where the notice does not include all IFB documents, an additional five (5) days [shall] must be allowed. Notices of availability [shall] must indicate, at minimum:

- (A) the name of the agency and, if appropriate, the specific division or bureau soliciting the bids;
- (B) title and brief description of the goods, services, or construction required;
- (C) specific information about how, when, and where the IFB is available;
- (D) the required fee or deposit amount, if any, for obtaining the IFB;
- (E) the time, date, and location of any pre-bid conference or site visit, if any, and if attendance is mandatory;
- (F) the date, time, and location for the receipt and opening of bids;
- (G) [if applicable,] the name and phone number of the agency contact person, including email address, if applicable; and
- (H) the citywide bidders list used.

§ 2. Subparagraphs (ii) and (iii) of Paragraph (1) of Subdivision (o) of Section 3-02 of Chapter 3 of Title 9 of the Rules of the City of New York are amended, and a new Subparagraph (iv) is added, to read as follows:

(ii) Contracts for Purchase of Goods and Standard Services. Prior to the bid, the ACCO [shall] will determine whether the goods or standard services [shall] will be awarded to the lowest responsive and responsible bidder or to the responsive and responsible bidder whose bid represents the best value to the City. The responsive and responsible bidder whose bid meets the requirements and objectively measurable evaluation criteria set forth in the IFB, and whose bid price is the lowest, or whose bid represents the best value to the City by optimizing quality, cost and efficiency, [shall] will be selected for the contract.

(iii) If award will be made based on best value, best value may be determined by the ACCO, or the ACCO may convene a committee to make such determination. Any such committee [shall] must consist of persons with knowledge, expertise and experience sufficient to make a fair and reasonable determination. As set forth below the ACCO, or the committee as the case may be, may determine best value by consideration of price together with other factors deemed relevant by the ACCO and set forth in the IFB. In making such determination the ACCO, or committee, [shall] must consider the low responsive bid and the next low responsive bids that are within ten percent (10%) of the low responsive bid in price, including any bids that have been adjusted pursuant to subparagraph (iv) of this paragraph, or such higher percentage as approved by the CCPO either on an individual basis or by category or class. Such factors may include:

- (1) features of the offered product or service set forth in detailed specifications for the product offered;
- (2) warranties and or maintenance to be provided with the product or service;
- (3) references, past performance and reliability, including reliability or durability of the product being offered and current or past experience with the provision of similar goods or services;
- (4) organization, staffing (both members of staff and particular abilities and experience), and ability to undertake the type and complexity of the work;
- (5) financial capability; and
- (6) record of compliance with all federal, State and local laws, rules, licensing requirements, where applicable, and executive orders, including but not limited to compliance with existing labor standards and prevailing wage laws.

The ACCO, or committee, may consider any and all information related to such factors in determining best value and may require additional information to be submitted by the bidders with the bid, or alternatively, within up to thirty (30) days from the bid opening from all bidders whose bids are to be considered pursuant to in 3-02(o)(1)(iii). If a committee is used to evaluate the bids, then written evaluation forms shall be completed to record the evaluation of the bids and shall be signed and dated by all members of the committee.

(iv) If award will be made based on best value, a certified M/WBE in a group for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code must, except with the permission of the CCPO, be given a price preference of 10% and will be evaluated as if the bid price were 10% lower.

§ 3. The opening paragraph of Subdivision (a), and Paragraph (1) of Subdivision (a), of Section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York are amended to read as follows:

(a) The Request for Proposals (RFP) – Contents. RFPs [shall] must include the following data:

(1) statement that the contract award will be made to the responsible proposer whose proposal represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP, including the quantitative preference to be provided to proposals submitted by certified M/WBEs for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code;

§ 4. Subparagraphs (i) and (ii) of Paragraph (1) of Subdivision (d) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York are amended to read as follows:

(i) Distribution. RFPs or notices of their availability and their notices of solicitation [shall] must be posted on the City's website in a location that is accessible to the public simultaneously with their publication. RFPs and their notices of solicitation [shall] must also be electronically mailed [mailed, faxed, hand delivered, or otherwise furnished] to a sufficient number of vendors, including all vendors on the appropriate citywide bidders list established by the CCPO pursuant to §3-02(f) at least twenty (20) days prior to the due date, or within the time frames authorized by §3-03(h). An agency may, upon request of a vendor, provide RFPs or notices [electronically] by mail, fax, hand delivery, or otherwise. RFPs or notices of their availability may be electronically sent to vendors on agency-specific bidders lists, in addition to the appropriate citywide bidders list maintained by the CCPO, only with approval of the CCPO. For those proposals which are subject to §6-129 of the New York City Administrative Code (M/WBE and EBE program), a minimum of twenty seven (27) days prior to the due date [shall] must be provided.

(ii) Publication. This subparagraph [shall apply] applies to RFPs above the small purchase limits except that it [shall] does not apply where vendors will be solicited from a PQL.

(A) Frequency. Notice of solicitation shall be published once in the City Record not less than twenty days before the proposal opening date with the exception of accelerated procurements, which shall appear not less than three business days before the proposal opening date.

(B) Content. Such notice [shall] must include:

((a)) agency name;

((b)) PIN;

((c)) title and/or brief description of the goods, services, or construction to be procured;

- ((d)) estimated quantity, if any;
- ((e)) how the solicitation documents may be obtained;
- ((f)) date and time by which, and the place where, proposals [shall] must be submitted and, for goods and standard services, where the identity of all proposers will be disclosed;
- ((g)) required vendor qualifications or eligibility requirements, if any; [and]
- ((h)) identification of the citywide bidders list used; and
- ((i)) the name and phone number of the agency contact person, including email address, if applicable.

§ 5. Subdivision (g) of Section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York is amended by adding a new paragraph (6) to read as follows:

(6) Contract proposals from certified M/WBEs for purchase of goods and standard services. Proposals submitted by certified M/WBEs in a group for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code must, except with the permission of the CCPO, be provided one of following quantitative preferences, as determined by the ACCO:

(i) Ten percent (10%) of the total technical points; or

(ii) If such proposal's score was above a minimum threshold for quality on the weighted criteria as established in the solicitation, either a price preference of ten percent (10%) or a point preference of ten percent (10%) of the total technical points in the evaluation of its proposal, as to be determined by the ACCO.

§ 6. Subdivision (c) of Section 3-04 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

(c) Investment services. [The preferred method for procuring investment services is competitive sealed proposals.] Negotiated acquisition may be used for one or more City [pension funds or variable supplements funds] Retirement Systems to award a contract to a vendor that has been providing investment management services to the Retirement System(s) under a program to foster the growth of small or new investment managers (“the [emerging manager program] Emerging Manager Program”) as a manager or submanager, under the following conditions:

(1) the fund(s) have determined pursuant to a vote of its or their trustees, upon the presentation by the Comptroller or designee of his or her recommendation and after having been provided with a presolicitation report and such information from [an] the relevant asset class investment consultant(s) [as the fund(s) deem necessary] of the Retirement System(s), that it is in the best interest of the fund(s) and the City for the Comptroller to award a contract through negotiated acquisition;

(2) [the term of an emerging manager investment management contract (including all renewal and extension periods) will expire or the emerging manager investment contract within which the submanager provided services has expired or been terminated] the manager or submanager has provided investment management services to the pension funds under the Emerging Manager Program for a continuous period of at least twelve months, and where, if such investment management services have ended due to a contract expiration or termination, the contract ended no earlier than three (3) months prior to publication of the notice of intent to enter into negotiations;

- (3) the services provided by the manager or submanager are still required;
- (4) [the assets under management have grown beyond the fund's maximum selection eligibility level so that the manager or submanager could not be selected to participate in the emerging manager program;
- (5) in the case of a submanager, the assets under management of the submanager have grown sufficiently to make it eligible under the Comptroller's guidelines for a direct contract;

(6) there is no competitive sealed proposals or Investment Manager Search process for the manager or submanager's eligibility level and type of investment service in which the manager or submanager could participate or could have participated so that the services [which] that it provides would not be disrupted;

[(7)] (5) the term [or] of the new contract [shall] must not extend beyond the commencement date of contracts awarded pursuant to a competitive sealed proposal or Investment Manager Search process for a class of managers applicable to the manager or submanager for which the manager or submanager became eligible to compete [, and in no event shall be longer than three years (including all renewal and extension periods)];

[(8)] (6) over the immediately preceding market cycle of at least three (3) years, the manager or submanager has [both (i) exceeded the performance of generally accepted indices applicable to the investment services provided, and (ii) performed in the top fifty percent of firms in the marketplace providing a similar kind of investment service, as measured by generally recognized performance benchmarks contained in the Comptroller's guidelines applicable to the investment service provided] demonstrated organizational and staffing stability; managed growth of assets; a sound investment strategy and process; strong risk management; consistency of rolling, risk-adjusted, excess, net-of-fee returns relative to its assigned benchmark index; and fair and reasonable fees for services provided;

[(9)] (7) upon the request of a trustee(s), an investment manager proposed for award under this provision [shall] must be [made] available to respond to questions related to the proposed award; and

[(10)] (8) no contract procured pursuant to this provision may be executed without the approval of the fund(s), pursuant to a vote of its or their trustees, after a presentation by the Comptroller or his or her designee and submission of the Recommendation for Award [and proposed contract], which [shall] must include such information as necessary to establish that the manager or submanager meets the conditions for being awarded a contract under this section and provides fair and reasonable fees.

§ 7. Paragraph (3) of Subdivision (e) of Section 3-06 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

(3) A determination of the basis for the emergency and the selection of the vendor [shall] must be filed with the Corporation Counsel and the Comptroller, and [shall] must [include:] further be submitted to the City Council no later than fifteen days following the contract award. The determination [shall] must include:

- (i) the date emergency first became known;
- (ii) a list of goods, services, and construction procured;
- (iii) the names of all vendors solicited;
- (iv) the basis of vendor selection;
- (v) contract prices;
- (vi) the past performance history of the selected vendor;
- (vii) a listing of prior/related emergency contract; and
- (viii) PIN.

§ 8. Subdivisions (a) and (b) of Section 4-03 of Chapter 4 of Title 9 of the Rules of the City of New York are amended to read as follows:

(a) Application. If performance by the contractor is delayed for a reason set forth in the contract, and performance will not be completed within the time period or by the date set forth in the contract, a reasonable extension in time for performance may be allowed.

(b) Goods and [non-construction related] services.

(1) An extension of time may be granted only by the ACCO of the agency that awarded the contract upon written application by the contractor. An extension pursuant to this section may be granted only for performance based contracts (such as for the delivery of goods or deliverable based services) and this section does not apply to extensions pursuant to Section 4-02 or renewals pursuant to Section 4-04 of these Rules. For contracts consisting of separate deliverable based elements (such as task or purchase orders pursuant to a requirements contract), an extension pursuant to this section may be made only for such deliverable based elements (such as task or purchase orders) and not the underlying contract.

(2) The ruling of the ACCO [shall be] is final and binding as to the allowance of an extension, and the number of days allowed.

(3) The application for extension must detail each cause for delay, the date it occurred, and the resulting total delay in days attributed to such cause. For construction related services, the application must detail the cause for the delay only if it is within the knowledge of the applicant.

(4) For construction related services, if the extension is based on a delay in construction, the extension must not exceed the extension granted for the construction contract, unless the application sets forth an additional basis for the extension.

§ 9. These rules take effect on March 1, 2016, provided that §§ 1 and 4 of this rule, relating to amendments to subdivision (e) of section 3-02 and subdivision (d) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York, shall go into effect on July 1, 2016.