

## Statement of Basis and Purpose of Proposed Rule

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 offerers, reflecting, whenever possible, objective and quantifiable analysis. Pursuant to GML § 103 and State Finance Law § 163, such a basis may identify quantitative factors for offerers 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. PPB is proposing to further amend Chapter 3 to establish requirements for implementing quantitative factors for M/WBEs when evaluating bids for awarding of contracts as per State Finance Law § 163(1)(j).

The authority for PPB to promulgate these rules is found in sections 311 and 1043 of the New York City Charter.

### **The Proposed 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. Paragraph (1) of subdivision (o) of section 3-02 of Chapter 3 of Title 9 of the Rules of the City of New York is amended as follows:**

(o) Bid Evaluation and Vendor Selection.

(1) Vendor Selection.

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(ii) Contracts for Purchase of Goods and Standard Services. Prior to the bid, the ACCO shall determine whether the goods or standard services shall 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 be selected for the contract.

(iii) 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 shall, 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.

(iv) 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 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 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 were adjusted pursuant to subdivision (iii), 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.

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