

## 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 proposals. PPB is proposing to further amend Chapter 3 to establish requirements for implementing quantitative factors for M/WBEs when evaluating offers 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. Subdivision (a) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York is amended as follows:**

(a) The Request for Proposals (RFP) – Contents. RFPs shall 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;

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### **Section 1. Subdivision (g) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York is amended as follows:**

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(1) Contracts 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 shall, except with the permission of the CCPO, be provided one of following quantitative preferences, as determined by the ACCO:

(i) Ten (10) points out of one hundred (100) 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 (10) points out of one hundred (100) in the evaluation of its proposal, as to be determined by the ACCO.

(2) [(1)] Evaluation Committee. Proposals shall be reviewed by an evaluation committee consisting of no fewer than three persons with knowledge, expertise, and experience sufficient to make a fair and reasonable evaluation. If an RFP incorporates multiple competitions, each competition may be evaluated by a separate committee. The ACCO shall require each member of the evaluation committee(s) to submit a signed statement, in a format approved by the CCPO, agreeing to prohibitions on any conflicts of interest.

(a) Randomized evaluation process. If the ACCO determines that such a high volume of competing proposals is likely to be received that it will be infeasible for each member of the evaluation committee to read each proposal, the ACCO may, subject to the approval of the CCPO, establish a pool of appropriate evaluators and then randomly assign each proposal to at least three such evaluators for review.

(b) Outside Evaluators. The evaluation committee may include persons who are not employed by the agency. In addition, the ACCO may determine, subject to the approval of the CCPO, that it is in the best interests of the City for the evaluation committee to include persons who are not employees of the City of New York, provided however that such non-City employees may not constitute a majority of the evaluation committee. Such persons must serve without financial compensation, but may be entitled to travel and other related expenses as may be reasonably incurred in the execution of their role as an evaluator.

(3) [(2)] Rating Sheets. Ratings sheets or other written evaluation forms shall be used to evaluate proposals by the evaluators and each evaluator shall sign and date his or her rating sheet. Initial ratings may be amended and the amended ratings recorded on amended ratings sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained.

(4) [(3)] Proposal Discussions with Individual Offerors. The evaluation committee shall evaluate all proposals and may elect to enter into discussions with those whose proposals are acceptable or are reasonably likely to be made acceptable for any or all of the following purposes:

(i) promoting understanding of the City's requirements and the vendors' proposals and capabilities;

(ii) obtaining the best price for the City; or

(iii) arriving at a contract that will be most advantageous to the City taking into consideration price and the other evaluation factors set forth in the RFP.

(5) [(4)] Conduct of Discussions.

(i) Proposers shall be accorded fair treatment with respect to any opportunity for discussions and revisions of proposals.

(ii) The ACCO shall establish an agenda and schedule for conducting discussions.

(iii) If there is a need for any substantial clarification of, or change in, the RFP, the RFP must be amended to incorporate such clarification or change and shall be provided to all proposers.

(iv) Auction techniques (revealing one proposer's price to another) and disclosure of any information derived from competing proposals are prohibited.

(v) Any oral clarification of a proposal shall be confirmed in writing by the proposer.

(6) [(5)] Best and Final Offers. Best and final offers are the revised and corrected final proposals submitted by proposers after discussions, if any, have been held by the procuring agency.

(i) The ACCO shall establish a common date and time for the submission of best and final offers.

(ii) Best and final offers shall be submitted only once unless the ACCO makes a determination that it is in the City's best interest to conduct additional discussions and/or require another submission of best and final offers.

(iii) Proposers shall be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(iv) All best and final offers shall be recorded on the Register of Proposals and handled in accordance with the control procedures contained in these Rules.

(v) The ACCO may request best and final offers on the whole proposal or on any one or combination of its component parts (e.g., price, technical qualifications, approach, and/or capability). The request shall be the same for all proposers.

(vi) Best and final offers shall be evaluated in accordance with this subdivision.

(vii) For construction-related consulting services, in the event that the agency has chosen to negotiate a fair and reasonable price with the top-ranked proposer, if such a fee is not successfully negotiated, the agency may conclude such negotiations, and enter into negotiations with the next ranked vendor(s), as necessary.