

NOTICE OF ADOPTION OF FINAL RULE

The Procurement Policy Board has adopted amendments to **Chapter 1 General Provisions, Chapter 2 Procurement Process, Chapter 3 Methods of Source Selection, and Chapter 4 Contract Administration** of its Rules pursuant to Section 311 of the New York City Charter. The amendments were published in *The City Record* on August 2, 2013, and the required public hearing was held on September 10, 2013. The amendments were adopted by the Procurement Policy Board on October 24, 2013. These rules will take effect 30 days after publication.

Statement of Basis and Purpose

The City of New York invests billions of dollars annually in client and community-based services through competitive contracts. These contracts are awarded to providers to deliver a wide range of services such as mental health counseling, workforce training, foster care, after school programs, senior centers, and shelter and housing programs. The city agencies contracting for these services include the Administration for Children's Services, Department for the Aging, Department of Correction, Office of the Criminal Justice Coordinator, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Probation, Department of Housing Preservation and Development, Human Resources Administration, Department of Small Business Services, and Department of Youth and Community Development.

To streamline the procurement process for these client services contracts, on April 9, 2012, the Mayor issued Executive Order No. 160 (EO 160), establishing HHS Accelerator within the Office of the Mayor. HHS Accelerator was created to simplify and speed the contract process for client and community-based Services providers. Through a deliberate and collaborative multi-year planning process with providers, redundant paper-based requirements were removed, processes reengineered, and contract documents standardized. HHS Accelerator allows vendors to pre-qualify online, and upload and store documents electronically that were previously submitted by hard copy for each contract solicitation. HHS Accelerator also provides City oversight and contracting agencies a means for standardizing the procurement process, in particular service categories, and for monitoring solicitations centrally. EO 160 also established the position of HHS Accelerator Director.

The amendments to the rules:

- Define functions of HHS Accelerator and authority of the HHS Accelerator Director;
- Establish the HHS Accelerator Rule as the default procurement method for client service contracts except as otherwise provided in the rule;
- Set forth the policy and criteria governing the prequalification of vendors through HHS Accelerator, including a method for a vendor to appeal denial of prequalification through HHS Accelerator;
- Establish a process for soliciting proposals from prequalified vendors through HHS Accelerator.

New material is underlined and deletions are [bracketed].

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

Section 1. Paragraph (1) subdivision(e) of section 1-01 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

Section 1-01 Definitions

HHS (Health and Human Services) Accelerator. HHS Accelerator is an office that facilitates the central management of the procurement process for client services and contractual relationships with client services vendors by creating and maintaining a web-based document vault for client services vendors; by creating and maintaining a centralized, electronic and web-accessible categorization system of services provided for all City agencies; by prequalifying client services providers; and by managing procurements for client services.

HHS Accelerator Director. A position designated by the Mayor to head HHS Accelerator with regard to procurements conducted through HHS Accelerator.

§ 2. Paragraph 2 of subdivision (c) of section 2-04 of Chapter 2 of Title 9 of the Rules of the City of New York is amended to read as follows:

Section 2-04 MULTI-TERM CONTRACTS (CLIENT SERVICES)

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(2) The form of the draft and final Plans shall be prescribed by the CCPO, in consultation with the HHS Accelerator Director. The draft and final Plans shall include, but not be limited to: the type of services to be provided, the authorized maximum amount of funding associated with the program, the authorized number of contracts to be let for a particular program, and the month and year of the next planned competitive solicitation.

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§ 3. Paragraph 6 of subdivision (c) of Section 2-04 of Chapter 2 of Title 9 of the Rules of the City of New York is amended to read as follows:

(6) The agency shall submit to the CCPO and the HHS Accelerator Director by August 31 a copy of the Plan approved by the ACCO.

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§ 4. Subdivision (d) of Section 2-04 of Chapter 2 of Title 9 of the Rules of the City of New York is amended to read as follows:

(d) Determination and Approvals. Prior to issuing a solicitation for a multi-term contract, the ACCO, with the approval of the HHS Accelerator Director for those procurements procured pursuant to Section 3-16 of these Rules, shall make a determination that:

§ 5. Paragraph (2)(i) of subdivision (e) of section 2-08 of Title 9 of the Rules of the City of New York is amended to read as follows:

(i) by applicants, at the time of an application for inclusion on a prequalified list, provided that this requirement shall not apply to applications under HHS Accelerator pursuant to Rule 3-16;

§6. Paragraph 6 of subdivision (b) of section 2-09 of Title 9 of the Rules of the City of New York is amended to read as follows:

Section 2-09 RECOMMENDATION FOR AWARD.

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(6) date of City Record publication and date and publication name of any other advertised notice. If a prequalified vendor list other than HHS Accelerator is used, date(s) of advertisement(s) for prequalified list; if the procurement is from a sole source, the date of the notice of intent to enter sole source negotiations;

§ 7. Subdivision (c) of section 3-01 of Title 9 of the Rules of the City of New York is amended to read as follows:

(c) *Preference for Competitive Sealed Proposals in Certain Contracts.* Procurement by competitive sealed proposals, including, where applicable, through HHS Accelerator, is the preferred method for awarding contracts for non-commodity data processing equipment and for information technology, non-commodity data processing, architectural, engineering, client, legal, accounting, financial, training, educational, cultural, medical, managed care, employee health benefits, scientific management, research, performing arts, and systems consultation services, and/or other similar services.

A “Special Case” determination is not required for such procurements.

§ 8. Subdivision (a) of section 3-10 of Title 9 of the Rules of the City of New York is amended to read as follows:

(a) **Policy.** Prequalification allows an agency to evaluate the qualifications of vendors for provision of particular categories of goods, services, construction, or construction- related services (including subcategories based on expertise, size, dollar size of project, or other factors as determined by the ACCO) before issuing a solicitation for a specific contract. Except for procurements for construction, a procurement using a PQL shall be considered a “special case” under these Rules. This Section does not apply to the prequalification of vendors through HHS Accelerator pursuant to Section 3-16.

§ 9. Chapter 3 of Title 9 of the Rules of the City of New York is amended by adding a new section 3-16 to read as follows:

Section 3-16 HHS Accelerator.

(a) Policy.

(1) Client services contracts must be procured through HHS Accelerator unless the HHS Accelerator Director authorizes, with the approval of the CCPO, the use of a different procurement method. Notwithstanding the above, the authorization of the HHS Accelerator Director is not required for procurements pursuant to Section 1-02(d); Section 1-02(e); Section 3-04(b)(2)(iii); Section 3-05; Section 3-06; Section 3-08; Section 3-09; and Section 3-13.

(2) The HHS Accelerator Director prequalifies vendors by evaluating their qualifications to provide client services (including subcategories of specific client services). When procuring client services pursuant to this Section, an agency must issue a solicitation for a specific contract to HHS Accelerator prequalified vendors in accordance with the provisions of this Section. The ACCO may permit joint ventures of two or more prequalified vendors. A procurement using HHS Accelerator is considered a "special case" under these Rules without the requirement for a further determination.

(b) Criteria. In developing the HHS Accelerator PQL, the HHS Accelerator Director may use any of the criteria listed in this subsection. Criteria that may be used to prequalify vendors for HHS Accelerator include, but are not limited to:

(1) current and past experience with similar projects;

- (2) references, past performance, and reliability;
- (3) organization, number of staff, staff abilities and experience, and the organization's ability to undertake the type and complexity of work;
- (4) financial capability, responsibility and reliability for such type and complexity of work, and availability of appropriate resources;
- (5) 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;
- (6) compliance with equal employment opportunity requirements and anti-discrimination laws;
- (7) business integrity of vendor.

(c) Public Notice of HHS Accelerator PQL.

(1) Frequency. At least once annually for five consecutive editions, the HHS Accelerator Director must publish in the City Record, a notice or notices specifically identifying client services categories covered by HHS Accelerator and inviting vendors to apply for inclusion on the HHS Accelerator PQL. The same documents published in the City record must be posted continuously and prominently on the City's website. The City's website shall also include the criteria used to prequalify vendors. The application to be included on the HHS Accelerator PQL must always be available.

(2) Content. The notice must include contact information for the HHS Accelerator Office, the procurement category, and information on how the vendor may obtain an application.

(d) Prequalification Questionnaire. A vendor must complete and submit a prequalification questionnaire developed by the HHS Accelerator Director in consultation with the CCPO. After prequalification, a vendor may update information contained in HHS Accelerator as needed. At least once every three years, and when submitting any bid or proposal in response to a solicitation from the HHS Accelerator PQL, vendors must affirm that there has been no change in the information included in the prequalification questionnaire, or if there have been changes, provide the changed information.

(e) Making the Prequalification Decision. Prequalification questionnaires will be reviewed by the HHS Accelerator Director and other personnel with knowledge, expertise, and experience sufficient to make a fair and reasonable determination, as appropriate. The HHS Accelerator Director must approve or deny prequalification within ninety days from the date of submission of a properly completed prequalification questionnaire.

(f) Denial or Revocation of Prequalification.

(1) Any vendor whose qualifications fail to meet the criteria established by the

HHS Accelerator Director will be denied prequalification. The prequalified status of a vendor may be revoked at any time based on changed circumstance, conditions, or status of the vendor or its staff, or additional information acquired by the HHS Accelerator Director, or further analysis of the information upon which the original prequalification determination was made where the new information or further analysis indicates that the vendor does not meet the established criteria for prequalification.

(2) The HHS Accelerator Director must notify the vendor in writing of a denial or revocation of prequalification, stating the reasons for the determination and informing the vendor of the right to appeal. The notification must also include the following statement:

The vendor must also send a copy of its appeal to the New York City Comptroller, for informational purposes, at the Office of the New York City Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007, (212) 669-2323.

A copy of the HHS Accelerator Director's determination must also be sent to the CCPO for inclusion in the VENDEX database and to the Comptroller's Office.

(3) HHS Accelerator PQLs must be reviewed at least once every three years to ensure that firms that no longer meet prequalification criteria are not retained on the list.

(g) Appeal of Denial or Revocation of Prequalification.

(1) Time Limit. A vendor shall have fifteen days from receipt of the determination to file a written appeal of that determination with the HHS Accelerator Director. Receipt of notice by the vendor will be deemed to be no later than five days from the date of mailing, or upon delivery if delivered using a system that provides proof of the date of delivery. Filing of the appeal must be accomplished by actual delivery of the hard copy appeal document to the office of the HHS Accelerator Director using a system that provides proof of the date of delivery.

(2) Form and Content. The appeal must be in writing and must briefly state all of the facts or other basis upon which the vendor contests the HHS Accelerator Director's determination. Supporting documentation, if any, must be included.

(3) Determination. The HHS Accelerator Director must consider the appeal, and must make a prompt written decision with respect to its merits. The HHS Accelerator Director may in his/her sole discretion convene an informal conference with the vendor to resolve the issue by mutual consent prior to making a determination.

(4) Notification. A copy of the decision of the HHS Accelerator Director must be sent to the vendor, stating the reasons for the decision and informing the vendor of the right to appeal. A copy of the determination must be sent to the Comptroller's Office and to the CCPO to modify the VENDEX database.

(5) Appeal to OATH. The decision of the HHS Accelerator Director shall be final unless appealed to OATH. If a vendor wishes to contest the HHS Accelerator Director's decision, it may appeal to OATH, which shall hear and take final action in the matter in accordance with its rules. The petition to OATH shall be filed by the vendor within fifteen days of the date of the decision. Supporting documentation, if any, shall be included. The vendor shall, at the same time, send a copy of its appeal to the HHS Accelerator Director, CCPO, and Comptroller's Office. The HHS Accelerator Director shall forward a copy of all appeal-related documents within fourteen days of its receipt of the copy of the vendor's appeal to OATH. During the pendency of the appeal, an Agency may proceed with the solicitation. OATH shall review the decision and determine whether that decision is arbitrary or capricious and whether it is based on substantial evidence. Copies of OATH's determination shall be sent to the vendor, HHS Accelerator Director, Comptroller's Office, and, where the decision results in the revocation of prequalification, to the CCPO for any modifications to the VENDEX database.

(h) Prequalification Not a Finding of Responsibility. That a vendor has been prequalified does not imply a finding of responsibility for a particular procurement. Between the time of receipt of proposals or bid opening and contract award, the ACCO may determine that a prequalified vendor is not responsible for a particular procurement pursuant to Section 2-08. If the ACCO makes such determination, in addition to the requirements of Section 2-08, he or she must also notify the HHS Accelerator Director, who will then determine whether a vendor should be removed from the PQL.

(i) Solicitation from HHS Accelerator PQL. The solicitation of bids or proposals through HHS Accelerator is limited to vendors on the HHS Accelerator PQL who are prequalified in the specific category(ies) of client services being solicited. The solicitation of bids or proposals through HHS Accelerator must be publicly advertised to provide notice to vendors of the solicitation and an opportunity to apply for prequalification in order to submit a proposal.

(j) Requirement for a Concept Report for a New Client Services Program. At least 45 days prior to issuing a Client Services Requests for Proposals (“CS-RFP”) for a new client services program, the agency must publicly release a concept report regarding such CS-RFP.

(1) For the purposes of this section, the term “new client services program” means any program that differs substantially in scope from an agency’s current contractual client services programs, including, but not limited to, substantial differences in the number or types of clients, geographic areas, evaluation criteria, service design, or price maximums or ranges per participant, if applicable.

(2) For the purposes of this section, the term “concept report” means a document outlining the basic requirements of an RFP for client services contracts and includes, but is not limited to, the following information:

(i) purpose of the CS-RFP;

(ii) planned method of evaluating proposals;

(iii) proposed term of the contract(s);

(iv) procurement timeline, including, but not limited to, the expected start date for the new contract(s), expected CS-RFP issuance date, approximate proposal submission deadline and expected award announcement date;

(v) funding information, including but not limited to, total funding available for the CS-RFP and sources of funding, anticipated number of contracts to be awarded, average funding level of contracts, anticipated funding minimums, maximums or ranges per participant, if applicable, and funding match requirements, if any;

(vi) program information, including, but not limited to, as applicable, proposed model or program parameters, site, service hours, participant

population(s) to be served and participant minimums and/or maximums; and

(vii) proposed vendor performance reporting requirements.

(3) Notwithstanding the issuance of a concept report, the agency may change the above-required information at any time after the issuance of such concept report.

(4) Prior to release of the concept report, the agency must publish a notification of its release in five consecutive editions of the City Record and electronically on the City's website in a location that is accessible to the public.

(5) Upon release, the concept report must be posted electronically on the City's website in a location that is accessible to the public.

(6) Non-compliance with this section shall not be grounds to invalidate a contract.

(k) CS-RFP Contents. CS-RFPs must include the following data:

(1) statement that the contract award will be made only to vendors that are prequalified through HHS Accelerator at the time that proposals are due;

(2) statement that the contract award will be made to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the price and such other criteria that are set forth in the RFP;

(3) statement of work or scope of services statement, performance requirements, and any special instructions;

(4) the specific criteria and the relative weight of each criterion or category of criteria that will be used to evaluate the proposals;

(5) statement of how price will be evaluated. In addition, the following statements regarding price must be included:

(i) a notice that prices shall be irrevocable until contract award, unless the proposal is withdrawn, and that offers may be withdrawn only after the expiration of ninety days (or such longer period as is specified in the solicitation) after opening of proposals, in writing received by the agency prior to award;

(ii) if applicable, request for cost breakdown of the proposed price;

(6) proposal submission requirements including requirements, if any, for the electronic submission of proposals, including through the use of documents contained in the HHS Accelerator document repository; if applicable, that technical and price proposals must be submitted in separate sealed envelopes (paper) or attachments (electronic); and the time and date after which proposals will not be accepted as well as the location of proposal submission;

(7) other information such as delivery dates or time frames within which the work must be completed. Where it is anticipated that a contract will extend beyond one year, the following information must be included in any solicitation, in addition to any other requirements of these Rules;

- (i) a statement of intent to award a multi-term contract, and an estimate of the quantity of services required for the proposed contract period;
- (ii) a request for a proposal of a total price which shall be binding in the first year and may be negotiable from year to year thereafter;
- (iii) that the multi-term contract is subject to modification or cancellation if adequate funds are not appropriated to the agency to support continuation of performance in any fiscal year succeeding the first;
- (iv) that the multi-term contract is subject to modification or cancellation if the vendor's performance is not satisfactory;
- (v) that the Contracting Officer must notify the vendor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-term contract for each succeeding fiscal year;
- (vi) whether proposers must submit prices for the first year, for the entire period of performance, or for some portion of the period; and
- (vii) a statement setting forth those costs, if any, for which the vendor will be reimbursed in the event of cancellation;
- (8) general as well as special terms and conditions, if applicable;
- (9) a notice of the proposer's rights to appeal certain decisions;
- (10) a notice of the City's prompt payment policy, including an explanation of the requirements for invoicing;
- (11) a requirement for acknowledgment of amendments;
- (12) if applicable, a request for a description of experience in the line of work being considered (including references);
- (13) if applicable and necessary in the judgment of the Contracting Officer, a request for description of staff capability along with the resumes of key individuals who will work on the contract;
- (14) a notice that although discussions may be conducted with offerors submitting acceptable proposals, award may be made without any discussions;
- (15) if applicable, a provision on the submission and consideration of multiple or alternate proposals;

(16) a provision that proposers should clearly identify those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposals;

(17) a notice that contract award is subject to the provisions of the MacBride Principles Law;

(18) a notice that contract award is subject to applicable provisions of federal, state, and other local laws and executive orders requiring affirmative action and equal employment opportunity;

(19) if applicable, a notice that contract award is subject to completion of a VENDEX questionnaire and review of that information by the Department of Investigation;

(20) where applicable, all information required pursuant to Section 312(a) of the Charter;

(21) the following statement:

The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007; telephone number (212) 669-2323; and

(22) name, address, and telephone number of contact person; and

(23) if applicable, information regarding multiple award task order contracts for services.

(l) “Open ended” CS -RFPs. For a client services program in which there is available funding for more than the available responsible vendor, and for which the requirements and qualifications are unusually complex and difficult to predict (such as Uniform Land Use Review Procedures approvals of appropriate sites, licenses, etc.) and for which interested potential vendors may become qualified during the course of a year, the ACCO may designate the applicable RFP as an “open-ended RFP.” If an RFP is so designated, the agency must publish quarterly in the City Record a notice of solicitation, clearly stating that the RFP may be obtained at any time and that proposals may be submitted in response to the RFP on an on-going basis. When an agency decides to terminate the open-ended RFP, it must publish the termination in the City Record.

(m) Proposal Preparation Time and Form.

(1) Vendors must be given a reasonable time to prepare their proposals, and this time must never be less than ten days. How proposals are to be submitted, including any required forms, must be included in the RFP.

(2) The ACCO is responsible for ensuring that an extract or copy of the scope of work is available for public inspection upon request at the agency issuing the solicitation and that the notice of the solicitation includes a description of the proposed service area and the name and telephone number of an agency individual who can be contacted to provide a copy of the extract or the scope of work.

(n) Public notice.

(1) Notice of solicitation. When RFPs, notices of their availability or notices of solicitation are published, they must also be simultaneously posted on the City's website in a location that is accessible to the public. An agency may, upon a vendor's request, provide RFPs or notices electronically. Notices of solicitation and copies of the CS-RFP must be delivered electronically at least twenty days prior to the due date to all vendors prequalified through HHS Accelerator for the applicable category(ies), unless a selective solicitation is being utilized pursuant section 3-16(j). Vendors must respond to the solicitation electronically via the HHS Accelerator System.

(2) Notice of Vendor Selection.

(i) Frequency. Notice of vendor selection exceeding the small purchase limits must be published once in the City Record within fifteen days after registration of the contract.

(ii) Content. Such notice must include:

(A) agency name;

(B) PIN;

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

(D) name and address of the vendor;

(E) dollar value of the contract; and

(F) procurement method by which the contract was let.

(o) CS-RFP Handling Procedures.

(1) Pre-Proposal or Pre-Solicitation Conferences. Pre-proposal or pre-solicitation conferences may be conducted as set forth in Section 3-02 of these Rules.

(2) Amendments to CS-RFPs. Amendments to CS-RFPs may be made as set forth in Section 3-02 of these Rules and will be issued by the Agency through HHS Accelerator.

(3) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn prior to the established due date as set forth in Section 3-02 of these Rules. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any, or if discussions have begun, the time and date by which best and final offers must be submitted.

(4) Late Proposals and Modifications. Any proposal or modification received after the established due date and time at the place designated for receipt is late and may be accepted only as set forth in paragraphs (5) through (8) below.

(5) Handling and Acceptance of Late Proposals. A late proposal may only be accepted if the ACCO determines that it is in the best interest of the City to do so. In such event, the ACCO may hold open the receipt of proposals by no more than three hours, during which time no other competing proposal may be opened. The ACCO may, upon written approval by the CCPO, hold open the receipt of proposals by longer than three hours, but until no later than the original submission time on the next business day; such approval may be given by the CCPO only where the need for holding the receipt of proposals open for a longer time arises from generally applicable emergency circumstances, such as weather or transit emergencies. No late proposals can be accepted if any proposals have been opened. Where an ACCO has determined that it is in the best interest of the City to accept a late proposal, any other late proposal received during the period of extension must also be accepted.

(6) Documentation of Late Proposals. The ACCO must, within one business day of accepting late proposals, document the reasons that it is in the best interest of the City to approve the extension, indicate the length of time extended, list the name of any vendor(s) submitting a proposal received during the extension period established pursuant to paragraph (5) above, and include an affirmative statement that no proposals were opened before the late proposal was accepted and that any other late proposal received during the period of extension was also accepted.

(7) Late Modifications. A late modification of an accepted proposal that makes its terms more favorable to the City must be considered at any time it is received and, if accepted by the ACCO, must be so documented in the Recommendation for Award.

(8) Record. A record must be made of each request for acceptance of a late proposal or modification. A late proposal or modification that is not accepted by the ACCO must not be opened until after registration of the contract.

(9) Receipt and Registration of Proposals. The identity of an offeror shall not be disclosed prior to the established date and time for receipt of proposals. Proposals shall not be opened publicly. Proposals and modifications shall be time and date-stamped upon receipt and held in a secure place until the established due date and time. After the date and time established for the receipt of proposals, a Register of Proposals including shall be prepared and available for public inspection after award of a contract. .

(p) Evaluation Process. Award, if any, must be made to the responsible proposer whose proposal 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. In evaluating the proposals, the agency may consider only price and the criteria set forth in the RFP. In considering price, the agency may use methods such as ranking technically viable proposals by price, evaluating price per technical point, or evaluating proposals in accordance with another combination of price and technical merit. Such methods may result in the agency selecting the highest technically rated proposer over another technically qualified proposer who offered a lower fee as a result of factors including, but not limited to, the selected vendor 's superior technical skill and expertise, increased likelihood of timely completion, and/or ability to manage several projects simultaneously with lower overall costs to the City, including costs in City personnel time and consultants.

(1) Evaluation Committee. Proposals must be reviewed by an evaluation committee 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. Each member of the evaluation committee(s) must submit a signed statement to the ACCO, in a format approved by the CCPO, agreeing to prohibitions on any conflicts of interest.

(a) Randomized evaluation process. If the HHS Accelerator Director determines that the expected number of proposals will be large enough to make it infeasible for each member of the evaluation committee to read each proposal, the ACCO may, subject to the approval of the HHS Accelerator Director, 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 not employed by the agency. In addition, the ACCO may determine, subject to the approval of the HHS Accelerator Director, 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 that such non-City employees may not constitute a majority of the evaluation committee. Such persons must serve without compensation, but may be entitled to travel and other related expenses as may be reasonably incurred in their role as an evaluator.

(2) Rating Sheets. Ratings sheets or other written evaluation forms must be used by the evaluators to evaluate proposals. Each evaluator must 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 must be maintained.

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

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

(ii) to obtain the best price for the City; or

(iii) to award a contract that will be most advantageous to the City taking into consideration price and the other evaluation criteria in the RFP.

(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 must set 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 the amended RFP must 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 must be confirmed in writing by the proposer.

(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 agency.

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

(ii) Best and final offers may 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 must 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 must be recorded on the Register of Proposals and handled in accordance with the control procedures contained in this Section.

(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 must be the same for all proposers.

(vi) Best and final offers must be evaluated in accordance with subdivision 3-16(q).

(q) Mistakes in Proposals.

(1) Confirmation of Proposal. When the ACCO knows or has reason to conclude before award that a mistake has been made by the proposer, he or she must request the proposer to confirm the proposal. If the proposer alleges there is a mistake in the proposal, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in this subdivision are met.

(2) Mistakes Discovered After Receipt of Proposals but Before Vendor Selection.

(i) During Discussions Prior to Best and Final Offers. Once discussions are commenced with any proposer or after best and final offers are requested, any offeror may correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(ii) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror, must be treated in accordance with Section 3-02(m)(3)(i) of these Rules.

(iii) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only in accordance with Section 3-02(m)(3)(ii) of these Rules.

(3) Mistakes Discovered After Vendor Selection. Mistakes may not be corrected after vendor selection except in accordance with Section 3-02(m)(4) of these Rules.

(4) Determinations Required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a determination must be prepared in accordance with Section 3-02(m)(5) of these Rules.

(r) Vendor Selection and Documentation. The ACCO must make a determination showing the basis on which the contract award was made to the responsible proposer whose proposal was determined to be the most advantageous to the City, taking into consideration the price and other criteria in the RFP. This determination must be included in a Recommendation for Award. Each Recommendation for Award must include at a minimum the following information:

(1) justification of the award;

(2) if the award is for client services for which there is agency price history, a price comparison of the proposed price versus previous price, with reasons for any increases as supported by a cost/price analysis;

(3) reasons for multiple award contracts;

(4) any special terms and conditions included in the proposed contract that were derived from a cost/price analysis;

(5) affirmative finding of responsibility for the selected proposer(s); and

(6) efforts to negotiate better value.

Upon determination of the most favorable proposal and after obtaining all required approvals, the Contracting Officer shall award the contract to that proposer.

§ 10. Paragraph (2) of subdivision (a) of section 4-12 of Chapter 4 of Title 9 of the Rules of the City of New York is amended to read as follows:

(2) In the circumstance wherein an expiring contract for client services is to be replaced by a new contract awarded from an RFP pursuant to Section 3-03 or via HHS Accelerator pursuant to Section 3-16, renewed pursuant to Section 4-04 or extended pursuant to Sections 3-04(b)(2)(iii) or 4-02(b)(1)(iii), the agency should notify the selected vendor of its selection by no later than ninety (90) days prior to the expiration date of the contract that is to be replaced, renewed or extended. Earlier notification is preferable, particularly where the agency anticipates that the vendor will be required to file a new VENDEX questionnaire pursuant to Section 2-08(e)(2). In addition, where an agency proposes to continue services by means of a new RFP award, the Notice of Solicitation for such RFP should be published by the agency pursuant to Section 3-03(d), or by the HHS Accelerator Director pursuant to Section 3-16(b)(1), by no later than two hundred fifty (250) days prior to the expiration of the contracts to be replaced.