

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on proposed amendments related to rules concerning waiver of a finding of non-responsiveness.

Date / Time: June 4, 2012
3:00pm – 5:00pm

Location: 253 Broadway, 14th Floor Conference Room
New York, New York 10007

Contact: Andrea Glick
Director
Mayor's Office of Contract Services
253 Broadway, 9th Floor
New York, New York 10007

Proposed Rule Amendment

Pursuant to the authority vested in the Procurement Policy Board by sections 311 and 1043 of the New York City Charter the Procurement Policy Board hereby proposes to amend Chapter 2 of Title 9 of the Rules of the City of New York.

The proposed amendments were not included in the board's most recent regulatory agenda, because the amendments were not anticipated at the time the agenda was published.

Instructions

Written comments regarding the proposed amendments must be received by close of business on June 4, 2012. Written comments should be sent to:

Jennifer Jones Austin
Chair
Procurement Policy Board
253 Broadway, 9th Floor
New York, New York 10007

or electronically through NYC RULES at www.nyc.gov/nycrules by June 4, 2012.

If you need a sign language interpreter or other form of reasonable accommodation for disability at the hearing, please notify Andrea Glick by close of business on May 29, 2012.

Written comments and a summary of the oral comments will be available for public inspection within a reasonable time after receipt between 9:00 a.m. and 4:30 p.m. at the Mayor's Office of Contract Services.

Statement of Basis and Purpose

This rule is proposed pursuant to the authority of the Procurement Policy Board under sections 311 and 1043 of the New York City Charter.

According to the rules of the Procurement Policy Board, a responsive bid or proposal complies with:

- all material terms and conditions of the agency's procurement solicitation, and
- all material requirements of the agency's specifications for the goods, services, or construction to be procured.

The Agency Chief Contracting Officer ("ACCO") is required to make a determination of responsiveness before a contract can be awarded to a potential vendor.

Courts interpreting whether a bid must be rejected because it did not comply with bid requirements have stated that to waive a finding of non-responsiveness and award a contract to an otherwise non-responsive bidder, the procuring agency must conclude that such a waiver would not:

- deprive the agency of the assurance that the contract will be performed according to its specific requirements, or
- adversely affect the competition.

The proposed amendment would make the Procurement Policy Board rule regarding non-responsiveness consistent with this interpretation.

New material is underlined and deletions are [bracketed].

Section 1. Subdivision (d) of section 2-07 of Chapter 2 of Title 9 of the Rules of the City of New York is amended as follows:

(d) Rejection of Bids or Proposals. Bids or proposals that fail to conform with the standards set forth above shall be rejected unless the ACCO determines in writing that waiving the nonconformance would not deprive the agency of the assurance that the contract will be performed according to its specified requirements and would not adversely affect the competition by placing a bidder in a position of advantage over other bidders or by otherwise undermining the competition.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rule Governing Responsiveness of Bids and Proposals (Section 2-07)

REFERENCE NUMBER: 2012 RG 20

RULEMAKING AGENCY: Procurement Policy Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: March 15, 2012

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Rule Governing Responsiveness of Bids and Proposals
(Section 2-07)**

REFERENCE NUMBER: MOCS-3

RULEMAKING AGENCY: MOCS

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco Navarro
Mayor's Office of Operations

March 20, 2012
Date