

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the proposed amendments related to performance evaluations required to be done for contracts for goods procured by competitive sealed bids on the basis of best value to the City.

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 ("PPB") by section 311 and in accordance with section 1043 of the New York City Charter the PPB hereby proposes to amend Chapter 4 of Title 9 of the Rules of the City of New York ("RCNY").

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

Prior to recent amendments to New York State General Municipal Law § 103, contracts for public work and contracts for purchase contracts (i.e., contracts for the purchase of goods and standard services) had to be procured, as a general matter, by publicly advertised, low sealed bid. The recent changes to GML § 103 (the "Best Value Law") give the City the option to procure purchase contracts based on best value to the City, as that phrase is defined in State Finance Law § 163. Under that section, best value is defined in terms of the optimization of quality, cost and efficiency.

The proposed amendment provides that performance evaluations be done for contracts for goods procured by competitive sealed bids on the basis of best value to the City.

The Proposed Rule Amendments

New material is underlined and deletions are [bracketed].

Section 1. Subdivision (b) of section 4-01 of Chapter 4 of Title 9 of the Rules of the City of New York is amended as follows:

(b) Frequency. The agency shall monitor the vendor's performance against such standards and indicators on an ongoing basis and sufficiently far in advance of the end of the contract term to determine whether an existing contract should be extended, renewed, terminated, or allowed to lapse. A performance evaluation shall be done no less than once annually except that for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the small purchase limits, an evaluation report shall be prepared only in cases of deficient performance. Notification to the vendor of deficient performance shall be made as soon as practicable, and shall not await the annual evaluation. The CCPO shall establish procedures to ensure systematic evaluation of vendor performance.

**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: Best Value Rules

REFERENCE NUMBER: 2011 RG 021

RULEMAKING AGENCY: Procurement Policy Board

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

- (i) are drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) are not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, are narrowly drawn to achieve their stated purposes; and
- (iv) to the extent practicable and appropriate, contain statements of basis and purpose that provide a clear explanation of the rules and the requirements imposed by the rules.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 9, 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: Best Value Rules
REFERENCE NUMBER: MOCS-4-5-6-7-8-9
RULEMAKING AGENCY: MOCS**

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

- (i) Are 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) Do not provide a cure period because the proposed rules do 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

April 12, 2012
Date