

NOTICE
OF ADOPTION OF FINAL RULE

The Procurement Policy Board (PPB) has adopted an amendment to § 2-04, **Multi-Term Contracts (Client Services), of chapter 2 of Title 9 of the Rules of the City of New York**, pursuant to Sections 311 and 1043 of the New York City Charter. The amendment was published on May 13, 2009 in the City Record. A public hearing was held on June 18, 2009. The amendment was adopted by the Procurement Policy Board on June 24, 2009.

Basis and Purpose of the Amendment

The amendment expands the circumstances under which an agency may enter into six year and nine year contract terms for client service contracts, and clarifies the circumstances under which terms longer than nine years may be used. These changes will result in client services contracts that more appropriately serve clients' needs, and will better permit client services vendors to establish links with the communities served, as well as appropriate lease and financing terms for the facilities needed for the provision of such services.

The Amended Rule

In the amendment, which immediately follows this notice, new material is underlined and deletions are bracketed.

Jose Maldonado, Chair

Section 1. Subdivisions (e) and (f) of section 2-04 of Title 9 of the Rules of the City of New York is amended as follows:

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

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(e) Permitted Length of Contract Terms. Client service contracts [may] should be awarded for a term that is appropriate for the services to be performed, taking into consideration the nature of the services themselves, as well as other factors relevant to the provision of the services. The ACCO shall make a determination as to the basis for the term of a client services contract. All client service contracts may be awarded for at least an initial term, or a total term including all renewals, of up to three years [for Category One, six years for Category Two, and nine years for Category Three. The ACCO shall make a determination as to whether a particular contract or category of contract shall be designated as Category One, Two or Three. Such contracts may be structured as

contracts for a lesser period of time, with a renewal clause in accordance with these Rules, so long as the term of the original contract including all renewals does not exceed the stated limits]. The term for a client services contract should otherwise be guided, in general, by the provisions set forth below.

[In an extraordinary case for compelling reasons, such as the need to finance a program through the issuance of long-term bonds, a contract may be awarded for a term in excess of nine years. For such an award, the determination of the CCPO that such a longer term is necessary, shall be required.]

[(f) Categories One, Two, and Three.

(1) General. Any client services contract may be treated as a Category One contract. Any Category Three contract may be treated as a Category Two contract. Any client services contract that is not within Category Two or Category Three shall be within Category One.

(2) Category Two. Category Two includes:]

(1) Six-year contracts. Examples of contracts for which a total term, including renewals, of up to six years would be appropriate include:

(i) contracts in programs [where services are provided in a center-based facility where obtaining necessary permits and approvals and/or other control of the site as a result of zoning or land use issues is unusually complex or difficult;

(ii) contracts in programs] in which there is a requirement for the vendor to establish linkages with other vendors in the locality, in order to provide effective services to the clients;

(ii[iii]) contracts in programs where the population to be served is fragile and/or difficult to serve and the well-being of the clients would be jeopardized by potentially frequent change in the vendor;

(iii[iv]) contracts in programs where the development and continuity of a personal, supportive, or therapeutic relationship between the caregiver and the affected client(s) is an integral requirement of the support service or treatment being provided, and the support service or treatment would be impaired by the severance of that relationship as a result of the change of vendors; and

(iv[v]) [in the case of other specific contracts, including contracts that would otherwise fall within Category One, under extraordinarily compelling circumstances] other contracts where the ACCO has set forth with particularity the reasons that it is not practicable or

advantageous to competitively resolicit proposals as often as every three years[, and this determination has been approved by the CPPO prior to the solicitation].

[Examples of programs that may be included within Category Two are:

- (i) day care, head start, and homemaker services;
- (ii) youth programs and community development programs (other than community services block grant programs);
- (iii) alcohol and substance abuse programs;
- (iv) worker career centers;
- (v) abuse prevention, community guardian program, center-based employment programs, foodbank and hunger program, home care programs, non-residential services for victims of domestic violence, and protective services for adults;
- (vi) caregiver respite services, case management, elder abuse prevention, home care home delivered meals, safe streets program, senior centers, social adult daycare, and transportation;
- (vii) disaster relief;
- (ix) alternatives to incarceration, anti-drug abuse, indigent criminal defense, mediation services, victim services, and youth recreational services;
- (x) crime victim services, juvenile diversion programs, outpatient alcohol and substance abuse programs;
- (xi) aftercare programs; and
- (xii) medical services for secure and non-secure detention facilities, and non-secure detention facilities.]

(2) Nine-year contracts. Examples of contracts for which a total term, including renewals, of up to nine years would be appropriate include:

[(3) Category Three. Category Three includes:]

- (i) contracts in programs where the treatment modality includes a long-term therapeutic relationship between the client and the caregiver as an integral part of the treatment program, and the

treatment of the client would be jeopardized by the severance of that relationship as a result of change of vendors;

(ii) contracts in residential care programs; [and]

(iii) contracts in programs where services are provided in a center-based facility where obtaining necessary permits and approvals and/or other control of the site as a result of zoning land use issues or leasing is unusually complex or difficult;

(iv) contracts in programs where the procurement includes a significant investment by the contractor for capital improvements;
and

(v[iii]) [in the case of other specific contracts, under extraordinarily compelling circumstances,] other contracts where the ACCO has set forth with particularity the reasons that it is not practicable or advantageous to competitively resolicit proposals as often as every six years[, and this determination has been approved by the CPPO prior to the solicitation].

[Examples of programs that may be included within Category Three are:

(i) foster care and preventative services;

(ii) direct mental hygiene services (other than alcohol and substance abuse programs);

(iii) family center services;

(iv) AIDS housing and domestic violence shelters;

(v) reception centers, tier II temporary family residences, and transitional adult residences; and

(vi) residential care.

(e)] (3) In an extraordinary case for compelling reasons, such as the need to finance a program through the issuance of long-term bonds or the need to obtain financing associated with securing a site that can only be obtained from a long term lease, a contract may be awarded for a term in excess of nine years and shall be coterminous with the financing provisions. For such an award, the determination of the CCPO that such a longer term is necessary shall be required.

