

**NOTICE**  
**OF ADOPTION OF FINAL RULE**

The Procurement Policy Board has adopted an amendment to **Chapter 3 Competitive Sealed Bidding** of its Rules pursuant to Section 311 of the New York City Charter. The amendment was published on January 14, 2009 in the City Record. A public hearing was held on February 18, 2009. The amendment was adopted by the Procurement Policy Board on March 4, 2009.

**Basis and Purpose of the Amendment**

The amendment to section 3-02 requires the Agency to give notice in invitations for bids of the M/WBE and EBE requirements of section 6-129 of the Administrative Code, where applicable, as well as extending the time for proposal preparation for proposals subject to the M/WBE and EBE requirements. The amendment also requires the DSBS to maintain a list of certified M/WBE and EBE businesses and requires that a summary or transcript of pre-bid or pre-solicitation conferences be posted on the City's website. Finally, in light of current law, the amendment deletes the provision relating to awards other than to the low bidder. The amendment makes a series of changes to conform section 3-02 to changes that have occurred in the law.

**The Amended Rule**

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

Jose Maldonado, Chair

**Section 1. Subparagraph (xiv) of paragraph (2) of subdivision (b) of section 3-02 of Title 9 of the Rules of the City of New York is amended as follows:**

(xiv) a notice that contract award is subject, if applicable, to Section 6-129 of the New York City Administrative Code (M/WBE and EBE program), as well as to applicable provisions of federal, State, and other local laws and executive orders requiring affirmative action and equal employment opportunity;

**Section 2. Paragraph (2) of subdivision (b) of section 3-02 of Title 9 of the Rules of the City of New York is amended by adding a new subparagraph (xix), to read as follows:**

(xix) a statement that the bidder will be required to comply, if applicable, with Section 220/230 of the New York State Labor Law, Section 6-109 of the New York Administrative Code, Mayoral Executive Order 102 of 2006, and with all other federal, State, and local labor laws and regulations, including but not limited to providing on-the-job training opportunities and payment of prevailing wages and living wages; and

**Section 3. Subparagraph (xix) of paragraph (2) of subdivision (b) of section 3-02 of Title 9 of the Rules of the City of New York is renumbered subparagraph (xx), and clauses (H), (I) and (J) of such subparagraph are amended to read as follows:**

[(xix)] (xx) where applicable for construction contracts, the following shall be additionally included:

\* \* \*

(H) a requirement that for projects on which more than one prime contractor will be involved, all bidders examine the invitation for bid packages for all other parts of the project; and

(I) [a statement that the bidder will be required to comply with Section 220/230 of the New York State Labor Law and with all other federal, State, and local labor laws and regulations, including but not limited to providing on-the-job training opportunities and payment of prevailing wages; and]

[(J)] a notice, for those contracts not otherwise subject to Section 6-129 of the New York Administrative Code (M/WBE and EBE Program), that contract award is subject to the provisions of Section 6-108.1 of the New York City Administrative Code relating to the LBE program and its implementing rules.

**Section 4. Subparagraph (i) of paragraph (1) of subdivision (e) of section 3-02 of Title 9 of the Rules of the City of New York is amended to read as follows:**

- (1) Notice of Solicitation.
- (i) Distribution. IFBs or notices of their availability shall be mailed, faxed, hand delivered, or otherwise furnished [at least fifteen days in advance of the due date for the bids] to a sufficient number of [vendor]vendors, including all vendors on the bidders list for the purpose of securing competition. Such IFBs or notices shall be sent at least fifteen (15) days in advance of the due date for bids, or at least twenty-two (22) days in advance of the due date for bids which are subject to Section 6-129 of the New York City Administrative Code (M/WBE and EBE program). An agency may, upon request of a vendor, provide IFBs or notices electronically. Where the notice does not include all IFB documents, an additional five (5) days shall be allowed. Notices of availability shall indicate, at minimum:
- (A) the name of the agency and, if appropriate, the specific division or bureau soliciting the bids;
  - (B) title and brief description of the goods, services, or construction required;
  - (C) specific information about how, when, and where the IFB is available;
  - (D) the required fee or deposit amount, if any, for obtaining the IFB;
  - (E) the time, date, and location of any pre-bid conference or site visit, if any, and if attendance is mandatory;
  - (F) the date, time, and location for the receipt and opening of bids; and
  - (G) if applicable, the name and phone number of the agency contact person.

**Section 5. Subclause ((g)) of clause (B) of subparagraph (ii) of paragraph (1) of subdivision (e) of section 3-02 of Title 9 of the Rules of the City of New York is amended, and a new subclause ((h)) is added, to read as follows:**

- (B) Content. Such notice shall include:

\* \* \*

((g)) required vendor qualifications or eligibility requirements, if any[.] and

((h)) A statement, if applicable, that the solicitation is subject to Section 6-129 of the Administrative Code (MWBE and EBE program).

**Section 6. Paragraphs (1) and (2) of subdivision (f) of section 3-02 of Title 9 of the Rules of the City of New York are amended to read as follows:**

(f) Bidder Lists.

(1) Lists of vendors interested in being solicited for bids shall be compiled and maintained by the procuring agency. In addition, the CCPO may authorize one or more agencies to maintain citywide bidders' lists. Bidders lists shall be classified by standard categories of goods, services, and construction that are sufficiently detailed to provide meaningful distinctions among categories. Bidders lists shall include the names, addresses, EIN, e-mail addresses, and telephone numbers of the vendors[, and, if known, the minority and women vendor status as]. In addition, DSBS shall maintain a list of businesses certified by [DSBS] that agency as [. Each agency shall make reasonable efforts to ensure inclusion of] minority [and] owned, women[‘s business] owned and emerging business enterprises [on its bidders lists].

(2) The CCPO shall cause to be continuously published in the City Record notice of the availability of applications for vendors to be added to agency bidder lists for goods, services, and construction regularly procured by the City. Every effort shall be made to publish notice in a manner that [will encourage applications from] encourages minority, [and] women[‘s] and emerging business enterprises to certify with DSBS.

**Section 7. Subdivision (h) and paragraph (4) of subdivision (i) of section 3-02 of Title 9 of the Rules of the City of New York are amended to read as follows:**

(h) Pre-Bid or Pre-Solicitation Conferences. Pre-bid or pre-solicitation conferences may be conducted by the ACCO to explain the procurement requirements. Written notice of any conference shall be provided to all prospective vendors. A pre-bid conference should be held long enough after the IFB has been issued to allow bidders to become familiar with [it] the solicitation documents, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the IFB unless a change is made by amendment as provided in this section. A summary or transcript of the conference shall be prepared[, and [if a transcript is made] shall be [a public record] made available and shall be posted

on the City's website. A record of attendance shall be kept of all conferences, and shall be made available and shall be posted on the City's website.

- (i) Amendments to IFBs.

\* \* \*

(4) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective vendors to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible, and stated in the amendment or [, if necessary,] shall be communicated by electronic mail, facsimile, or telephone and confirmed in the amendment. A notice of amendment shall be posted on the City's website.

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**Section 8. Subparagraph (i) of paragraph (2) of subdivision (p) of section 3-02 of Title 9 of the Rules of the City of New York is amended to read as follows:**

(2) Vendor Selection. In the case of low tie bids, the ACCO shall break the tie in the following order of priority:

- (i) Select a certified New York City [small, ]minority [or] owned, woman-owned or emerging business entity bidder;

**Section 9. Subdivision (u) of section 3-02 of Title 9 of the Rules of the City of New York, relating to Selection of Other Than or in Addition to the Lowest Responsible Bidder, is REPEALED, and subdivisions (v), (w) and (x) of such section are relettered subdivisions (u), (v) and (w), respectively.**