

NOTICE
OF ADOPTION OF FINAL RULE

The Procurement Policy Board (PPB) has adopted an amendment to § 4-04, **Renewals, of chapter 4 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 removes the requirement that ACCOs make certain determinations as part of a pre-renewal review of client services contracts and folds the substantive requirements into the Recommendation for Renewal that is required to be approved by the ACCO prior to contract renewals. The amendment also requires the contracting agency to post notices of the intent to renew such contracts on the agency's web site. These changes will expedite the processing of renewal contracts, thus ensuring seamless continuation of needed services to clients, while fostering accountability and transparency into the selection process of 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. Section 4-04 of Title 9 of the Rules of the City of New York is amended as follows:

Section 4-04 RENEWALS.

- (a) Defined. Renewals are defined as re-registration of previous contracts with the same vendor [or service provider], with substantially unchanged terms and conditions, but possibly revised quantities, lists, or schedules or items to be supplied.
- (b) Renewals Not Permitted. Unless specifically contracted for, as in contracts containing an option to renew, renewals shall not be permitted where:
 - (1) additional quantities of goods are required, except in the case of goods acquired through requirements contracts (which shall be subject to the contract term extension limitations in Section 4-02(b)(1)(iii), or

(2) except as provided in Sections 4-02(b)(1)(ii) and 4-02(b)(1)(iii), a continuation of types of services is required, the procurements shall be made by new solicitations by one of the appropriate methods of source selection set forth in these Rules.

(c) [Pre-Renewal Review (Client Services)]. Prior to exercising the renewal option of any contract in Categories One, Two, and Three, the ACCO shall make the following determinations and, where required, shall provide public notice and conduct a public hearing pursuant to these Rules:

- (1) the services in questions are still needed, required, or mandated;
- (2) based on the agency's performance evaluation process, the provider's performance for the prior contract period is determined to be in compliance with the requirements of the contract;
- (3) based on Fiscal Officer certification, funds are or are expected to be available for the renewal contract;
- (4) the prices set forth in the contract are still fair and reasonable;
- (5) renewal of the contract with the existing service provider is in the best interest of the individual clients and client populations being served, community, and City; and
- (6) the renewal contract is on substantially the same terms and conditions as the original contract.

(d) Recommendation for Renewal. [Subsequent to making the determination to renew a contract with a client services provider, the] The Contracting Officer shall prepare a Recommendation for Renewal which shall be approved by the ACCO. The Recommendation for Renewal shall include the following documentation:

- (1) agency name and department;
- (2) PIN;
- (3) [client services provider] vendor name, address, Tax Identification Number, and telephone number;
- (4) program name(s) and address(es) where services are actually provided to clients, or administered if the services are not "center-based";
- (5) borough(s) and community district(s) in which the program shall operate;

- (6) period of (including prospective renewal options, if any) and amount of contract;
- (7) period of and amount of prior contract;
- (8) source of funding, and a certification from an authorized fiscal officer of the agency that funds are or are expected to be available for the renewal contract;
- (9) if applicable, dates of City Record and other publication of notices pertaining to the intent to renew;
- (10) [for client services, if applicable,] an assessment of vendor's performance during the prior contract period (overall rating of latest performance assessment) and a statement, based on the agency's performance evaluation process, of whether the provider's performance for the prior contract period was determined to be in compliance with the requirements of the contract;
- (11) if applicable, date, period covered, and findings of latest available financial audit report, name of the CPA firm that conducted it, and whether the CPA firm was unable to express an opinion as to the adequacy of the contractor's books and records;
- (12) comparison of actual and contracted levels of service (and/or minimum outcome requirements) for the prior contract period, and for client services, a statement that the services in question are still needed, required or mandated and that renewal of the contract with the existing service provider is in the best interests of the City including the interests of individuals clients, client populations being served and the affected community;
- (13) proposed contracted levels of service (and/or minimum outcome requirements) for the new contract;
- (14) if a public hearing was held, the date of the public hearing, the number of witnesses testifying, and an explanation of the effect, if any, of the testimony offered at the public hearing on the decision to renew and/or on the terms and conditions of the contract; if a public hearing was not held, an explanation of why a public hearing was not held, including a statement that the renewal contract is on substantially the same terms and conditions as the original contract;
- (15) signature of the ACCO signifying his/her approval and verifying the accuracy of the information;
- (16) the date the services contracted for pursuant to this contract were last solicited; and

(17) all applicable determinations called for by these Rules, including a determination, if applicable, that the prices set forth in the contract are still fair and reasonable.

[(e)] (d) Notice and Publication Requirements for Client Services Renewals. Public notice of the intent to renew a contract shall be provided in accordance with this subdivision, for the purpose of eliciting information concerning the provider's performance and other factors relevant to the renewal.

(1) Contracts subject to the public notice requirement.

(i) In the case of contracts in value greater than \$100,000, such notice shall be provided whenever a public hearing is required.

(ii) In the case of contracts in value greater than \$25,000 but not more than \$100,000, such notice shall be provided unless:

(A) public notice and the approval of the CCPO for the original contract award or the exercise of a renewal option occurred within the prior two years, and

(B) in connection with that award or renewal, public notice and approval were provided concerning both the original contract term and all possible renewal options contained within the contract.

(iii) Public notice is required if the renewal option to be exercised is for a period of three or more years.

(iv) Such notice is not required in the case of renewals of contracts of \$25,000 or less.

(2) Publication Requirements. Within seven calendar days after the approval by the ACCO, the agency shall initiate steps to publish notice of the intent to renew once in the City Record and shall post such notice on the City's website in a location that is accessible by the public simultaneously with its publication. The agency may also publish notice of the intent to renew in one or more of the local newspapers of the borough and/or community within the borough where the services are provided. The notice shall also be mailed to the proposed provider and the Borough President(s) and Community Board chair(s) in the district(s) where the services are provided, and shall be conspicuously placed on the premises of the location where services are provided, if practicable, and otherwise where the program is administered. The agency shall take other steps to solicit comments from clients, advocates, and others sufficiently

in advance of the renewal date so that appropriate action can be taken to respond to issues identified in such comments.

(3) Contract Summary. Prior to providing public notice of the intent to renew a contract, the ACCO shall prepare a summary of the terms and conditions of the proposed renewal contract, including a description of the scope of services, the target population, the proposed renewal term of the contract, and the location of the program. The summary may be prepared for a category of contracts, accompanied by a detailed contractor/site specific schedule.

(4) Content of Public Notice. The public notice of intent to renew the contract shall include:

- (i) the City agency name;
- (ii) the name and address of the vendor;
- (iii) PIN;
- (iv) the address of the location where the services are provided, if practicable, and otherwise where the program is administered;
- (v) a brief description of the nature of the services to be provided; and
- (vi) the name and telephone number of the City agency staff member who can be contacted to provide a copy of the contract summary.

[(f)] (e) Public Hearing Requirements. Renewal contracts shall be subject to public hearings for the purpose of eliciting information concerning the vendor's performance and other factors relevant to the renewal, unless:

- (1) the renewal option to be exercised is in a contract where the original contract or any prior renewal option was subject to a public hearing, and the original contract term and all possible renewal options contained within the contract, were subject to such public hearing, or
- (2) in exigent circumstances, in the case of contracts in value less than \$10,000,000, the ACCO has made a determination justifying an exemption and that justification has been approved by the CCPO.

[(g)] (f) Notice of Award. Notice of Award of a renewal contract shall be published in the City Record within fifteen days after registration of the renewal contract.