

NOTICE OF ADOPTION OF FINAL RULE

The Procurement Policy Board has adopted an amendment to **Chapter 2 Vendor Responsibility and Appeal of Determination of Non-Responsibility and Chapter 3 Competitive Sealed Bidding, and Competitive Sealed Proposals** of its Rules pursuant to Section 311 of the New York City Charter. The amendment was published on April 2, 2010 in the City Record. A public hearing was held on May 5, 2010. The amendment was adopted by the Procurement Policy Board on May 11, 2010.

Basis and Purpose of the Amendment

The amendments provide for an administrative fee to be charged to prime vendors and subcontractors for vendor name checks to defray the cost of the City's VENDEX system and the Vendor Name Check process. The amount of the fee for the vendor itself and any of its subcontractors for which a Vendor Name Check is made would be charged against payments owed to the vendor once the contract is registered. The amendments also require the CCPO to compile Citywide bidders lists in addition to any agency bidders lists authorized by the CCPO in order to make the administration of City bidder lists more efficient.

The Amended Rule

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

Jose Maldonado, Chair

Section 1. Subdivision (f) of section 2-08 of Title 9 of the Rules of the City of New York is amended to read as follows:

Section 2-08 VENDOR RESPONSIBILITY AND APPEAL OF DETERMINATION OF NON-RESPONSIBILITY.

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(f) Department of investigation and administrative fee.

(1) Prior to making its determination of vendor responsibility, the agency shall request the Department of Investigation to conduct a Vendor Name Check on the proposed vendor, which shall consist of a review of the names on the Questionnaire and other information to ascertain whether the business or its affiliated individuals are or have, during a relevant period of time, been the subject of an investigation by the Department. The Department of Investigation shall undertake the review expeditiously and provide an explanation to an agency if its review is not completed within thirty calendar days of the request. If the Department of Investigation ascertains that there has been such an investigation, it shall

provide a copy of any final report or statement of findings to the Agency Head for use in making the determination of responsibility. If the results of the review are not made available to the agency within thirty calendar days of the request, the agency may make its responsibility determination on the basis of the information then available to it.

(2) For any contract or subcontract that is subject to the Vendor Name Check process set forth in section (f)(1), the CCPO may charge a fee for the administration of the VENDEX system, including the Vendor Name Check process, in the amount of \$175 for contracts of an estimated value less than or equal to \$1,000,000 and \$350 for contracts of an estimated value greater than \$1,000,000. Such fee will be charged against payments made to the vendor on the contract at issue. The timing of the contract award shall not be affected by a fee incurred but not yet paid by the vendor. A prime vendor is responsible for the payment of fees for any subcontractors of the vendor for which Vendor Name Check requests are made. Nothing contained in these Rules shall prohibit a prime vendor from recovering from its subcontractors the amount of such fees attributable to those subcontractors. The VENDEX administrative fee may be waived at the discretion of the CCPO if it is determined that such waiver is in the City's best interest.

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

Section 3-02 COMPETITIVE SEALED BIDDING.

* * *

(e) Public Notice.

(1) Notice of Solicitation.

(i) Distribution. IFBs or notices of their availability shall be mailed, faxed, hand delivered, or otherwise furnished to a sufficient number of vendors, including all vendors on the appropriate citywide bidders list established by the CCPO for the purpose of securing competition. IFBs or notices of their availability may be sent to vendors on agency-specific bidders lists, in addition to the appropriate citywide bidders list maintained by the CCPO, only with approval of the CCPO. 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; and
- (H) the citywide bidders list used.

* * *

(f) Bidders lists.

(1) [Lists] The CCPO shall compile citywide 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 or agency 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. In addition, bidders lists shall indicate which of the listed businesses have been certified by DSBS [shall maintain a list of businesses certified by that agency] as minority owned, women owned and emerging business enterprises.

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

(3) Application by vendors for placement on the citywide bidders lists or an agency's bidders [bidder] list shall be continuously available on request from the vendor.

(4) Vendors that fail to respond to solicitations or notices of availability of procurement opportunities on three consecutive invitations within one standard category may be removed by the [ACCO] CCPO from the applicable citywide bidders list or by the ACCO from the applicable agency bidder list after notice to the vendor. A “No Bid” statement on a returned bid shall be considered a response. Vendors may also be removed from a citywide bidders list pursuant to procedures prescribed by the CCPO. [In either case, application]Application for reinstatement shall be the responsibility of the vendor. [A “No Bid” statement on a returned bid shall be considered a response.]

(5) Unless otherwise provided, inclusion or exclusion of the name of a vendor on a bidders list [business] does not indicate that the vendor [business] is responsible in respect to a particular procurement or otherwise is capable of successfully performing a City contract.

Section 3. Subparagraph (i) and clause (B) of subparagraph (ii) of subdivision (d) of section 3-03 of Title 9 of the Rules of the City of New York are amended as follows:

Section 3-03 COMPETITIVE SEALED PROPOSALS.

* * *

(d) Public notice.

(1) Notice of solicitation.

(i) Distribution. RFPs or notices of their availability and their notices of solicitation shall be posted on the City’s website in a location that is accessible to the public simultaneously with their publication. RFPs and their notices of solicitation shall also be mailed, faxed, hand delivered, or otherwise furnished to a sufficient number of vendors, including all vendors on the appropriate citywide bidders list established by the CCPO pursuant to Section 3-02(f) at least twenty (20) days prior to the due date, or within the time frames authorized by Section 3-03 (h). An agency may, upon request of a vendor, provide RFPs or notices electronically. RFPs or notices of their availability may be sent to vendors on agency-specific bidders lists, in addition to the appropriate citywide bidders list maintained by the CCPO, only with approval of the CCPO. For those proposals which are subject to Section 6-129 of the New York City Administrative Code (M/WBE and EBE program), a minimum of twenty seven (27) days prior to the due date shall be provided.==

(ii) Publication. This subparagraph shall apply to RFPs above the small purchase limits except that it shall not apply where vendors will be solicited from a PQL.

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(B) Content. Such notice shall include:

((a)) agency name;

((b)) PIN;

((c)) title and/or brief description of the goods, services, or construction to be procured;

((d)) estimated quantity, if any;

((e)) how the solicitation documents may be obtained;

((f)) date and time by which, and the place where, proposals shall be submitted; [and]

((g)) required vendor qualifications or eligibility requirements, if any; and

((h)) identification of the citywide bidders list used.