

NOTICE OF ADOPTION OF FINAL RULE

The Procurement Policy Board has adopted amendments to **Chapter 3 Methods of Source Selection** of its Rules pursuant to Section 311 of the New York City Charter. The amendments were published in *The City Record* on April 27, 2012, and the required public hearing was held on June 4, 2012. The amendments were adopted by the Procurement Policy Board on April 8, 2013. These rules will take effect 30 days after publication.

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.

In light of the Best Value Law, the amendments to this rule:

- set forth the rules governing the purchase of goods and standard services through competitive sealed proposals,
- require that all awards based on competitive sealed proposals will be made based on the best value to the City as defined in the State Finance Law,
- require the identity of all proposers for goods and standard services to be disclosed at the due date and time for the proposals as required by the amendments to GML §103, and
- allow the multiple award process to be used for the purchase of goods and standard services and set forth the process for how those awards will be made.

The Rule Amendments

New material is underlined and deletions are [bracketed].

Section 1. Paragraph (1) of subdivision (a) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

- (1) statement that the contract award will be made to the responsible proposer whose proposal represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP;

Section 2. Clause (B) of subparagraph (ii) of paragraph (1) of subdivision (d) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

(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, for goods and standard services, where the identity of all proposers will be disclosed;
- ((g)) required vendor qualifications or eligibility requirements, if any; and
- ((h)) identification of the citywide bidders list used.

Section 3. Paragraph (9) of subdivision (f) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

(9) Receipt and Registration of Proposals. The identify of an offeror shall not be disclosed prior to the established date and time for receipt of proposals. Proposals shall not be opened publicly but shall be opened in the presence of two or more City employees. Proposals and modifications shall be time and date-stamped upon receipt and held in a secure place until the established due date and time. The agency shall disclose the identity of all proposers for goods and standard services on the due date and time of the proposals. After the date and time established for the receipt of proposals, a Register of Proposals shall be prepared and shall be open to public inspection after award of a contract. It shall include for all proposals the name of each offeror and the number of modifications received, if any.

Section 4. The first unnumbered paragraph of subdivision (g) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

(g) Evaluation Process. Award, if any, must be made to the responsible proposer whose proposal represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP. In evaluating the proposals, the agency may consider only price and the criteria set forth in the RFP. In considering price, the agency may use methods such as ranking technically viable proposals by price, evaluating price per technical point, or evaluating proposals in accordance with another combination of price and technical merit. Such methods may result in the agency selecting the highest technically rated proposer over another technically qualified proposer who offered a lower fee as a result of factors including, but not limited to, the selected vendor's superior technical skill and expertise, increased likelihood of timely completion, and/or ability to manage several projects simultaneously with lower overall costs to the City, including costs in City personnel time and consultants. However, for construction-related consulting services, including those procured through multiple award task orders, the agency shall rank proposers by technical merit, and then consider price by negotiating a fair and reasonable price with the highest technically ranked proposer(s). Other methods for considering price, including using fee curves based on market-derived data with appropriate consideration of complexity, or evaluating proposals in accordance with another combination of price and technical merit, may be used for construction-related consulting services only with the written approval of the CCPO.

Section 5. Subdivision (j) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

(j) Multiple Award Task Order Contracts.

(1) Determination. Multiple award task order contracts for goods or services may be awarded upon a determination by the ACCO that it is in the best interest of the City to award multiple contracts for services to multiple contractors and to allocate work among such contractors through a task order system. If an agency intends such contracts to be available for use by other City agencies, the provisions of Section 3-14 (Contracts for Services) shall also apply. The criteria to be considered by the ACCO in making such determination may include the following: the nature of the services to be procured; the expected frequency of task order issuance; the capacity of vendors to provide all of the required services within the required timeframes; and the potential advantage of multiple contracts (e.g., more favorable terms; more competitive pricing, etc.).

(2) Method.

(i) Multiple awards may be made for contracts for goods or services, pursuant to requests for proposals, in conjunction with the procedures prescribed in this subdivision. Such request for proposals, and the subsequent contracts, shall state the procedures and criteria to be used in

selecting the vendor to perform on an individual task order for services or purchase order for goods.

(A) For services other than standard services, [S]such procedures and criteria shall provide that each vendor shall receive each solicitation and have a reasonable opportunity to compete to provide the services, unless an alternative method of assigning task orders, as set forth below, is determined by the CCPO to be in the City's best interest and is set forth in the request for proposals and the contract. In the event that such alternative method is used, each selected vendor shall receive notice of assignment of each task order, regardless of whether each selected vendor received the solicitation for the task order.

(B) For goods and standard services, the agency may:

((a) select the vendor that represents the best value to the City for that particular task order or purchase order, based on each vendor's contract, or,

((b) solicit offers for each task order or purchase order from all awarded vendors. If the agency solicits offers for each task order or purchase order, each vendor shall receive each solicitation and have a reasonable opportunity to compete to provide the standard services or goods.

The agency may set forth an alternative method of assigning task orders or purchase orders if it is determined by the CCPO to be in the City's best interest and is set forth in the request for proposals and the contract. In the event that such alternative method is used for standard services, each vendor with a contract shall receive notice of assignment of each task order at the time each task order is issued, regardless of whether each vendor with a contract received the solicitation for the task order.

(ii) The following list constitutes acceptable alternative methods of assigning task orders:

(A) rotation, or other non-discretionary method of assignment, including where assignment pursuant to such method may be varied based on stated criteria (e.g., capacity or past performance);

(B) assignment to or competition among particular vendor(s) with technical expertise particularly suited to the task order;

(C) assignment to a particular vendor based on a vendor's particular geographic location, experience or knowledge; [and,]

(D) assignment to a particular vendor based on the agency's need to distribute task orders among vendors; and

(E) Any other method approved by the CCPO as set forth in the RFP.

(iii) In the event that a vendor selected pursuant to one of the selection methods in paragraphs (i) or (ii) above is unable to perform the services on

an individual task order or provide the goods to be purchased pursuant to an individual purchase order for reasons such as lack of capacity or conflict of interest, the agency may disqualify that vendor for purposes of that task order and select another vendor with approval of the CCPO.

(iv[ii]) Each vendor shall be required to respond to every solicitation for an individual task order or purchase order for which it is solicited. The ACCO may determine that a vendor is in default if it fails to bid without an adequate explanation for such failure.

([i]v) Price shall be among the criteria considered in making individual vendor selection decisions, and no task order shall be issued unless the ACCO determines that the proposed price is fair and reasonable. Prices set forth in a multiple award contract shall represent maximum prices that may be set forth in individual task orders issued to that vendor.

(3) Duration. Unless otherwise approved by the CCPO, contracts awarded pursuant to this section shall have an initial term, or a total term including all renewals, of not more than three years. Task orders or purchase orders may extend beyond the expiration of the contract term, in which event the terms and conditions of the contract shall continue to apply to the task order until its termination or expiration. Task orders or purchase orders shall have a maximum term of three years or, if issued for a specific project, until the specific project is completed. Notwithstanding the above, a task order or purchase order may be extended beyond or further extended beyond the expiration of the contract term, or beyond the expiration of the task order or purchase order, with approval of the CCPO [shall be required prior to extension of a task order beyond the expiration of the contract term, and for any further extensions of that task order].

Section 6. The first unnumbered paragraph of subdivision (k) of section 3-03 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

(k) Vendor Selection and Documentation. The ACCO shall make a determination showing the basis on which the contract award was made to the responsible proposer whose proposal was determined to represent the best value to the City and therefore to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP. This determination shall be included in a Recommendation of Award. Each Recommendation for Award shall include at a minimum the following information: