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NEW YORK CITY CODE, CHARTER AND RULES
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CURRENT THROUGH FIRST QUARTER 2001

ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

TITLE 6: CONTRACTS, PURCHASES AND FRANCHISES

CHAPTER 1: CONTRACTS AND PURCHASES

NYC Administrative Code § 6-116.2 (2001)

§ 6-116.2 [Computerized data base of purchases.]

a. The comptroller and the mayor shall jointly maintain, at the financial information services agency, a computerized data base. Such data base shall contain information for every franchise and concession and every contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, entered into by an agency, New York city affiliated agency, elected official or the council, including, but not limited to:

(1) the name, address, and federal taxpayer's identification number of the contractor, franchisee or concessionaire where available in accordance with applicable law;

(2) the dollar amount of each contract including original maximum and revised maximum expenditure authorized, current encumbrance and actual expenditures;

(3) the type of goods or services to be provided pursuant to the contract;

(4) the term of the contract, or in the case of a construction contract the starting and scheduled completion date of the contract and the date final payment is authorized;

(5) the agency, new york city affiliated agency, elected official or the council that awarded the contract, franchise or concession and the contract registration number, if any, assigned by the comptroller;

(6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure, and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder; and

(7) the date of any public hearing held with respect to the contract and the date and agenda number of action taken with respect to a concession or franchise by the franchise and concession review committee; and

(8) the contract budget category to which the contract is assigned, where applicable.

b.

(i) The mayor and comptroller shall be responsible for the maintenance of a computerized data system which shall contain information for every contract, in the following manner: the mayor shall be responsible for operation of the

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system; the mayor and the comptroller shall be jointly responsible for all policy decisions relating to the system. In addition, the mayor and the comptroller shall jointly review the operation of the system to ensure that the information required by this subdivision is maintained in a form that will enable each of them, and agencies, New York city affiliated agencies, elected officials and the council, to utilize the information in the performance of their duties. This system shall have access to information stored on other computerized data systems maintained by agencies, which information shall collectively include, but not be limited to:

(1) the current addresses and telephone numbers of:

A. the contractor's principal executive offices and the contractor's primary place of business in the New York city metropolitan area, if different,

B. the addresses of the three largest sites at which it is anticipated that work would occur in connection with the proposed contract, based on the number of persons to be employed at each site,

C. any other names under which the contractor has conducted business within the prior five years, and

D. the addresses and telephone numbers of all principal places of business and primary places of business in the New York city metropolitan area, if different, where the contractor has conducted business within the prior five years;

(2) the dun & bradstreet number of the contractor, if any;

(3) the taxpayer identification numbers, employer identification numbers or social security numbers of the contractor or the division or branch of the contractor which is actually entering into the contract;

(4) the type of business entity of the contractor including, but not limited to, sole proprietorship, partnership, joint venture or corporation;

(5) the date such business entity was formed, the state, county and country, if not within the United States, in which it was formed and the other counties within New York State in which a certificate of incorporation, certificate of doing business, or the equivalent, has been filed within the prior five years;

(6) the principal owners and officers of the contractor, their dates of birth, taxpayer identification numbers, social security numbers and their current business addresses and telephone numbers;

(7) the names, current business addresses and telephone numbers, taxpayer identification numbers and employer identification numbers of affiliates of the contractor;

(8) the principal owners and officers of affiliates of the contractor and their current business addresses and telephone numbers;

(9) the principal owners and officers of every subcontractor;

(10) the type, amount and contract registration number of all other contracts awarded to the contractor, as reflected in the database maintained pursuant to subdivision a of this section;

(11) the contract sanction history of the contractor for the prior five years, including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon the contractor's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;

(12) the contract sanction history for the prior five years of affiliates of the contractor including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon such entity's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;

(13) the name and telephone number of the chief contracting officer or other employee of the agency, elected official or the council responsible for supervision of those charged with day-to-day management of the contract;

(14) judgements or injunctions obtained within the prior five years in any judicial actions or proceedings initiated by any agency, any elected official or the council against the contractor with respect to a contract and any such judicial actions or proceedings that are pending;

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(15) record of all sanctions imposed within the prior five years as a result of judicial or administrative disciplinary proceedings with respect to any professional licenses held by the contractor, or a principal owner or officer of the contractor;

(16) whether city of New York income tax returns, where required, have been filed for the past five years;

(17) outstanding tax warrants and unsatisfied tax liens, as reflected in the records of the city;

(18) information from public reports of the organized crime control bureau and the New York state organized crime task force which indicates involvement in criminal activity;

(19) criminal proceedings pending against the contractor, and any principal owner or officer of such contractor;

(20) record of all criminal convictions of the contractor, any current principal owner or officer for any crime related to truthfulness or business conduct and for any other felony committed within the prior ten years, and of any former principal owner or officer, within the prior ten years, for any crime related to truthfulness or business conduct and for any other felony committed while he or she held such position or status;

(21) all pending bankruptcy proceedings and all bankruptcy proceedings initiated within the past seven years by or against the contractor and its affiliates;

(22) whether the contractor has certified that it was not founded or established or is not operated in a manner to evade the application or defeat the purpose of this section and is not the successor, assignee or affiliate of an entity which is ineligible to bid or propose on contracts or against which a proceeding to determine eligibility to bid or propose on contracts is pending;

(23) the name and main business address of anyone who the contractor retained, employed or designated to influence the preparation of contract specifications or the solicitation or award of this contract.

(ii) When personnel from any agency, elected officials or their staff, or members of the council or council staff learn that the certification required by subparagraph twenty-two of paragraph (i) may not be truthful, the appropriate law enforcement official shall be immediately informed of such fact and the fact of such notification shall be reflected in the data base, except when confidentiality is requested by the law enforcement official.

(iii) Information required from a contractor consisting of a contractor's social security number shall be obtained by the agency, elected official or the council entering into a contract as part of the administration of the taxes administered by the commissioner of finance for the purpose of establishing the identification of persons affected by such taxes.

(iv) In the event that procurement of goods, services or construction must be made on an emergency basis, as provided for in section three hundred fifteen of the charter, on an accelerated basis as provided for in section three hundred twenty-six of the charter, or expedited action is required due to urgent circumstances, or in such other circumstances as may be determined by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement, where it is not feasible to submit the information required by subdivision b prior to contract award, the required information may be submitted after award of the contract. However, all of the information required by subdivision b herein shall be submitted no later than thirty days from the date of the award. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on or otherwise be awarded a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

(v) Where a contractor or subcontractor becomes obligated to submit information required by this subdivision by reason of having been awarded a contract or subcontract, the value of which, when aggregated with the value of all other contracts or subcontracts awarded to that contractor or subcontractor during the immediately preceding twelve-month period, is valued at one hundred thousand dollars, or more, such information shall be submitted no later than thirty days after registration of the contract which resulted in the obligation to submit such information. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

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(vi) For the calendar year commencing on January 1, 1992, subcontractors shall be required to provide the information required by subparagraph nine of paragraph i and on or after June 30, 1994, subcontractors shall be subject to paragraph i in its entirety.

(vii) This subdivision shall not apply to any New York city affiliated agency, except that such New York city affiliated agency shall report cautionary information and the name and telephone number of the employee responsible for responding to inquiries concerning such information.

c. The information maintained pursuant to subdivision b shall be made accessible to the computerized data system established pursuant to subdivision a of this section in a form or format agreed upon by the mayor and the comptroller. The information contained in these computerized data systems shall be made available to any other data retrieval system maintained by an agency, New York city affiliated agency, elected official or the council for the purpose of providing information regarding contracts, franchises and concessions awarded and the contractors, franchisees and concessionaires to which they were awarded. The information concerning the past performance of contractors that is contained in a computerized data base maintained pursuant to section 6-116.1 of this code for such purposes shall be made available to these data systems.

d. All of the information as required by subdivisions a and b contained in these computerized data bases shall be made available on-line in read-only form to personnel from any agency or New York city affiliated agency, elected officials, members of the council and council staff, and shall be made available to members of the public, in accordance with sections three hundred thirty four and one thousand sixty four of the charter and article six of the public officers law.

e. No contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, franchise or concession shall be let by an agency, elected official or the council, unless the contract manager or other person responsible for making the recommendation for award has certified that these computerized data bases and the information maintained pursuant to section 6-116.1 of this code have been examined. This shall be in addition to any certifications required by chapter thirteen of the charter, the rules of the procurement policy board, where applicable, or any rules of the council relating to procurement.

f. Not later than January thirtieth following the close of each fiscal year, the comptroller shall publish a summary report setting forth information derived from the data base maintained pursuant to subdivision a of this section and the following information for each franchise, concession or contract for goods or services having a value of more than ten thousand dollars or in the case of construction, having a value of more than fifteen thousand dollars, including, but not limited to:

(1) the types and dollar amount of each contract franchise or concession entered into during the previous fiscal year;

(2) the registration number assigned by the comptroller, if any;

(3) the agency, New York city affiliated agency, elected official or the council entering into the contract; franchise or concession;

(4) the vendor entering into the contract, franchise or concession and the subcontractors engaged pursuant to each contract;

(5) the reason or reasons why the award of each such contract was deemed appropriate pursuant to subdivision a of section 312 of the charter, where applicable; and

(6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder. For franchises, this information shall also include whether the authorizing resolution of the council was complied with.

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g. Nothing in this section shall be deemed to require the disclosure of information that is confidential or privileged or the disclosure of which would be contrary to law.

h. Any contractor or subcontractor that has submitted to any agency, elected official or the council, the information required to be provided in accordance with subdivision b of this section shall be required to update that information only at three-year intervals, except that information required by paragraphs 6, 11, 12, 14, 15, 19, 20 and 21 of subdivision b shall be updated at each time the contractor or subcontractor is considered for the award of another contract or subcontract, and except as provided in paragraph iv or v of subdivision b, no contract or subcontract shall be awarded unless the contractor or subcontractor has certified that information previously submitted as to those requirements is correct as of the time of the award of the contract or subcontract.

i. Except as otherwise provided, for the purposes of subdivision b of this section,

(1) "affiliate" shall mean an entity in which the parent of the contractor owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the contractor also owns more than fifty per cent of the voting stock;

(2) "cautionary information" shall mean, in regard to a contractor, any adverse action by any New York city affiliated agency, including but not limited to poor performance evaluation, default, non-responsibility determination, debarment, suspension, withdrawal of prequalified status, or denial of prequalified status;

(3) "contract" shall mean and include any agreement between an agency, New York city affiliated agency, elected official or the council and a contractor, or any agreement between such a contractor and a subcontractor, which (a) is for the provision of goods, services or construction and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at one hundred thousand dollars or more; or (b) is for the provision of goods, services or construction, is awarded to a sole source and is valued at ten thousand dollars or more; or (c) is a concession and has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at one hundred thousand dollars or more; or (d) is a franchise. However, the amount provided for in clause a herein may be varied by rule of the procurement policy board, where applicable, or rule of the council relating to procurement, or, for franchises and concessions, rule of the franchise and concession review committee, as that amount applies to the information required by paragraphs 7, 8, 9 and 12 of subdivision b of this section, and the procurement policy board, where applicable, or the council, or, for franchises and concessions, the franchise and concession review committee, may by rule define specifically identified and limited circumstances in which contractors may be exempt from the requirement to submit information otherwise required by subdivision b of this section, but the rulemaking procedure required by chapter forty-five of the charter may not be initiated for such rule of the procurement policy board or franchise and concession review committee less than forty-five days after the submission by the procurement policy board or, for franchises and concessions, the franchise and concession review committee, to the council of a report stating the intention to promulgate such rule, the proposed text of such rule and the reasons therefor;

(4) "contractor" shall mean and include all individuals, sole proprietorships, partnerships, joint ventures or corporations who enter into a contract, as defined in paragraph three herein, with an agency, New York city affiliated agency, elected official or the council;

(5) "officer" shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known;

(6) "New York city affiliated agency" shall mean any entity the expenses of which are paid in whole or in part from the city treasury and the majority of the members of whose board are city officials or are appointed directly or indirectly by city officials, but shall not include any entity established under the New York city charter, this code or by executive order, any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility;

(7) "parent" shall mean an individual, partnership, joint venture or corporation which owns more than fifty percent of the voting stock of a contractor;

(8) "principal owner" shall mean an individual, partnership, joint venture or corporation which holds a ten percent or greater ownership interest in a contractor or subcontractor;

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(9) "subcontract" shall mean any contract, as defined in paragraph three herein, between a subcontractor and a contractor; and

(10) "subcontractor" shall mean an individual, sole proprietorship, partnership, joint venture or corporation which is engaged by a contractor pursuant to a contract, as defined in paragraph three herein.

j. Notwithstanding any other provision of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be submitted in a form or format and on a schedule to be determined by the mayor and the comptroller. In no event shall New York city affiliated agencies be required to submit such information prior to the award of any contract.

k. Notwithstanding any other provision of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be required only as to contracts funded in whole or in part with city funds, although nothing shall preclude New York city affiliated agencies from submitting information on contracts funded by other than city funds.

HISTORICAL NOTES:

6-116.2 add by LL 1987 No 52, § 2, eff two years after it shall have become law; signed by Mayor Aug 4, 1987.

6-116.2 (a) amd by LL 1992 No 44, § 2, eff ninety days after enactment, approved by Mayor Jul 7, 1992.

6-116.2 (a) 4 amd by LL 1992 No 44, § 2, eff ninety days after enactment, approved by Mayor Jul 7, 1992.

6-116.2 (a) 5 amd by LL 1992 No 44, § 2, eff ninety days after enactment, approved by Mayor Jul 7, 1992.

6-116.2 (a) 6 amd by LL 1992 No 44, § 2, eff ninety days after enactment, approved by Mayor Jul 7, 1992.

6-116.2 (a) 7 amd by LL 1992 No 34, § 1, eff June 16, 1992; rpld and renum by LL 1992 No 44, § 2, eff ninety days after enactment, approved by Mayor Jul 7, 1992, former par (8) renum as (7).

6-116.2 (a) 8 amd by LL 1992 No 34, § 1, eff June 16, 1992; renum and amd by LL 1992 No 44, § 2, eff ninety days after enactment, approved by Mayor Jul 7, 1992, renum as (7).

6-116.2 (b) renum and add by LL 1991 No 5, § 2, eff Jan 1, 1992, renum as (c).

6-116.2 (b) i amd by LL 1991 No 13, § 1, eff Feb 7, 1991; amd by LL 1992 No 44, § 3, eff ninety days after enactment, approved by Mayor Jul 7, 1992.

6-116.2 (b) i 1 amd by LL 1992 No 21, § 1, eff immediately, approved by Mayor March 27, 1992.

6-116.2 (b) i 22 amd by LL 1991 No 13, § 2, eff Feb 7, 1991; amd by LL 1992 No 49, § 1, eff immediately, approved by Mayor Jul 16, 1992.

6-116.2 (b) i 23 add by LL 1992 No 49, § 1, eff immediately, approved by Mayor Jul 16, 1992.

6-116.2 (b) ii amd by LL 1991 No 13, § 3, eff Feb 7, 1991.

6-116.2 (b) iv amd by LL 1991 No 13, § 3, eff Feb 7, 1991.

6-116.2 (b) v amd by LL 1991 No 13, § 3, eff Feb 7, 1991.

6-116.2 (b) vi amd by LL 1991 No 13, § 3, eff Feb 7, 1991; amd by LL 1993 No 64, § 1, eff immediately, approved by Mayor Jul 12, 1993, deemed in full force and effect as of Dec 31, 1992.