

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

The Procurement Policy Board (PPB) adopted an amendment to § 3-03, **Competitive Sealed Proposals, of chapter 3 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 proposed amendment was published on September 13, 2006. A public hearing was held on October 13, 2006. The amendment was adopted by the PPB on October 19, 2006. The effective date of this amendment is December 4, 2006.

**Basis and Purpose of the Amendment**

The proposed amendment to section 3-03: (1) clarifies how price is to be evaluated by agencies in evaluating proposals, including proposals for construction related services and those procured through multiple task orders, (2) clarifies rules regarding the evaluation process including the use of a randomized evaluation process in the case of high volume competing proposals and outside evaluators on evaluation committees, and (3) renumbers and reorganizes text as appropriate.

**The Amended Rule**

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

Brendan J. Sexton, Chair

**Section 1. Subdivisions (a) and (g) of section 3-03 of Title 9 of the Rules of the City of New York are amended to read as follows:**

(a) The Request for Proposals (RFP) – Contents. RFPs shall include the following data:

(1) statement that the contract award will be made to the responsible proposer whose proposal 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;

(2) statement of work or scope of services statement, performance requirements, and any special instructions;

[2)](3)the specific criteria and the relative weight of each criterion or category of criteria that will be used to evaluate the proposals;

(4) statement of how price will be evaluated. In addition, the following statements regarding price must be included:

(i) a notice that prices shall be irrevocable until contract award, unless the proposal is withdrawn, and that offers may be withdrawn only after the expiration of ninety days (or such longer period as is specified in the solicitation) after opening of proposals, in writing received by the agency prior to award;

(ii) if applicable, request for cost breakdown of the proposed price;

[3)](5) proposal submission requirements including requirements, if any, for the electronic submission of proposals; if applicable, that technical and price proposals shall be submitted in separate sealed envelopes (electronic or paper); and the time and date after which proposals will not be accepted as well as location of proposal submission;

[4)](6)other information such as delivery dates or time frames within which the work must be completed. Where it is anticipated that a contract will extend beyond one year, the following information must be included in any solicitation, in addition to any other requirements of these Rules:

- (i) a statement of intent to award a multi-term contract, and an estimate of the quantity of services required for the proposed contract period;
- (ii) for client services only, a request for a proposal of a total price which shall be binding in the first year and may be negotiable from year to year thereafter;
- (iii) that the multi-term contract is subject to modification or cancellation if adequate funds are not appropriated to the agency to support continuation of performance in any fiscal year succeeding the first;
- (iv) that the multi-term contract is subject to modification or cancellation if the vendor's performance is not satisfactory;
- (v) that the Contracting Officer shall notify the vendor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-term contract for each succeeding fiscal year;
- (vi) for client services only, whether proposers shall submit prices for the first year, for the entire period of performance, or for some portion of the period; and
- (vii) a statement setting forth those costs (if any) for which the vendor will be reimbursed in the event of cancellation;

[(5)](7)general as well as special terms and conditions, if applicable;

- [(6)](8) a notice of the proposer's rights to appeal certain decisions;
- [(7)](9) a notice of the City's prompt payment policy, including an explanation of the requirements for invoicing;
- [(8)] a notice that prices shall be irrevocable until contract award, unless the proposal is withdrawn, and that offers may be withdrawn only after the expiration of ninety days (or such longer period as is specified in the solicitation) after opening of proposals, in writing received by the agency prior to award;]
- [(9)](10) a requirement for acknowledgment of amendments;
- [(10)](11) if applicable, a request for a description of experience in the line of work being considered (including references);
- [(11)](12) if applicable and necessary in the judgment of the Contracting Officer, a request for description of staff capability along with the resumes of key individuals who will work on the contract;
- [(12)] if applicable, request for cost breakdown of the proposed price;]
- (13) a notice that although discussions may be conducted with offerors submitting acceptable proposals, award may be made without any discussions;
- (14) if applicable, provision on the submission and consideration of multiple or alternate proposals;
- (15) a provision that proposers should give specific attention to the identification of those portions of their proposals that they deem to be

confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposals;

(16) a notice that contract award is subject to the provisions of the MacBride Principles Law;

(17) a notice that contract award is subject to applicable provisions of federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity;

(18) if applicable, a notice that contract award is subject to completion of a VENDEX questionnaire and review of that information by the Department of Investigation;

(19) if applicable for construction and construction-related services contracts, a notice 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 implementation rules;

(20) where applicable, all information required pursuant to Section 312(a) of the Charter;

(21) the following statement:

The New York City Comptroller is charged  
with the audit of contracts in New York City.  
Any vendor who believes that there has been

unfairness, favoritism, or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007; telephone number (212) 669-2323;

and

- (22) name, address, and telephone number of contact person; and
- (23) if applicable, information regarding multiple award task order contracts for services.

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(g) Evaluation Process. [The RFP] Award, if any, must [state that the contract award will] be made to the responsible proposer whose proposal 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. [No other factors or criteria shall be used in the evaluation and award of the contracts except those specified 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.

(1) Evaluation Committee. Proposals shall be reviewed by an evaluation committee consisting of no fewer than three persons with knowledge, expertise, and experience sufficient to make a fair and reasonable evaluation. If an RFP incorporates multiple competitions, each competition may be evaluated by a separate committee. The ACCO shall require each member of the evaluation committee(s) to submit a signed statement, in a format approved by the CCPO, agreeing to prohibitions on any conflicts of interest.

(a) Randomized evaluation process. If the ACCO determines that such a high volume of competing proposals is likely to be received that it will be infeasible for each member of the evaluation committee to read each proposal, the ACCO

may, subject to the approval of the CCPO, establish a pool of appropriate evaluators and then randomly assign each proposal to at least three such evaluators for review.

(b) Outside Evaluators. The evaluation committee may include persons who are not employed by the agency. In addition, the ACCO may determine, subject to the approval of the CCPO, that it in the best interests of the City for the evaluation committee to include persons who are not employees of the City of New York, provided however that such non-City employees may not constitute a majority of the evaluation committee. Such persons must serve without financial compensation, but may be entitled to travel and other related expenses as may be reasonably incurred in the execution of their role as an evaluator.

(2) Rating Sheets. Ratings sheets or other written evaluation forms shall be used to evaluate proposals [and shall be signed and dated by all members of the evaluation committee]by the evaluators and each evaluator shall sign and date his or her rating sheets. Initial ratings may be amended and the amended ratings recorded on amended ratings sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained.

(3) Proposal Discussions with Individual Offerors. The evaluation committee shall evaluate all proposals and may elect to enter into

discussions with those whose proposals are acceptable or are reasonably likely to be made acceptable for any or all of the [purpose of] following purposes:

- (i) promoting understanding of the City's requirements and the vendors' proposals and capabilities;
  - (ii) obtaining the best price for the City; [and]or
  - (iii) arriving at a contract that will be most advantageous to the City taking into consideration price and the other evaluation factors set forth in the RFP.
- (4) Conduct of Discussions.
- (i) Proposers shall be accorded fair treatment with respect to any opportunity for discussions and revisions of proposals.
  - (ii) The ACCO shall establish an agenda and schedule for conducting discussions.
  - (iii) If there is a need for any substantial clarification of, or change in, the RFP, the RFP must be amended to incorporate such clarification or change and shall be provided to all proposers.
  - (iv) Auction techniques (revealing one proposer's price to another) and disclosure of any information derived from competing proposals are prohibited.
  - (v) Any oral clarification of a proposal shall be confirmed in writing by the proposer.

(5) Best and Final Offers. Best and final offers are the revised and corrected final proposals submitted by proposers after discussions, if any, have been held by the procuring agency.

(i) The ACCO shall establish a common date and time for the submission of best and final offers.

(ii) Best and final offers shall be submitted only once unless the ACCO makes a determination that it is in the City's best interest to conduct additional discussions and/or require another submission of best and final offers.

(iii) Proposers shall be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(iv) All best and final offers shall be recorded on the Register of Proposals and handled in accordance with the control procedures contained in these Rules.

(v) The ACCO may request best and final offers on the whole proposal or on any one or combination of its component parts (e.g., price, technical qualifications, approach, and/or capability). The request shall be the same for all proposers.

(vi) Best and final offers shall be evaluated in accordance with this subdivision.

(vii) For construction-related consulting services, in the event that the agency has chosen to negotiate a fair and reasonable price with the top-ranked proposer, if such a fee is not successfully negotiated, the agency may conclude such negotiations, and enter into negotiations with the next ranked vendor(s), as necessary.