
MEMORANDUM

FROM: Lisa Flores, City Chief Procurement Officer

TO: Guillermo Chacón, Member and Chair, PPB
Wayne Lambert, Member, PPB
Alicia Berenyi, Member, PPB
Victor O. Olds, Member, PPB
Charlette Hamamgian, Member, PPB

SUBJECT: Final Report on Innovative Procurement Method for DDC Construction Mentoring Program

DATE: December 12, 2023

On June 17, 2022, pursuant to Section 3-12 of the Procurement Policy Board (PPB) Rules, I approved an innovative procurement method to allow the New York City Department of Design and Construction (“DDC”) to solicit and award certain construction contracts to the participants of the DDC mentoring program, as set forth under the New York City Charter (“Charter”) (see Attachment A).

Section 1206 of Chapter 55 of the Charter authorizes DDC to establish a mentoring program for qualified Minority and Women-Owned Business Enterprises (“M/WBEs”) and small businesses in the construction trades. The mentoring program was established to provide the participants with the opportunity to bid on contracts specifically designated for the program with tailored guidance, training, technical assistance from a mentor.

The innovative procurement method furthers the intended goals of the mentoring program—to reduce the barriers of entry for meaningful participation of M/WBEs and small businesses in the procurement process. As diversifying the pool of competent bidders is in the City’s interest, the innovative method is being considered for codification into the PPB Rules.

On April 12, 2023, DDC registered the first contract procured through this innovative method. PPB Rule Subsection 3-12(f) provides that no later than eight months following the registration of the first contract let through an innovative procurement method, the CCPO must transmit a final report to the PPB recommending whether or not it would be in the City’s best interests to codify the innovative procurement method within the PPB Rules.

Pursuant to the terms of the innovative procurement authorization, the City has awarded and registered a contract to Approved General Contracting Inc., a minority-owned business enterprise, for the investigative probe work at Bellevue Men’s Shelter, totaling \$631,850.00.

Lisa M. Flores
 Director and
 City Chief Procurement Officer



Eric Adams
 Mayor

Pursuant to the terms of the innovative procurement authorization, the City currently has four procurements in the pre-award process: two for the restoration of Weeksville Historical Hunterfly Houses, one for restoring the facade at the Bellevue Men's Shelter, and one for replacement of a generator day tank at the Flushing Library, totaling approximately \$2,494,453.66.

Please refer to the tables below for information on the mentoring contract awarded (Table 1) and procurements in the pre-award process (Table 2).

Based on the results of the DDC mentoring program to date, there is an industry need for construction projects that can be performed by M/WBE firms under the training and tutelage of a qualified CM mentor. Moreover, the results have demonstrated that there is a demand from M/WBE firms seeking this work and training and a willingness among the CM industry to engage with these M/WBE firms and to provide the necessary guidance and mentorship. The fruits of this endeavor will create more pathways for M/WBE firms to participate in City construction projects, while simultaneously receiving invaluable experience and training, without the need to sit on the sidelines until they have demonstrated capacity to scale up their operations to perform large scale construction projects. As such, it is my recommendation that it is in the City's best interest to codify the DDC mentoring program innovative procurement within the PPB Rules.

Table 1. New Contract Awards

Vendor	EPIN	Award Amount
Approved General Contracting Inc. (MBE)	85023I0004	\$631,850.00
Grand Total		\$631,850.00

Table 2. Procurements in the Pre-Award Process

Project	EPIN	Estimated Value
Bellevue Mens Shelter Partial East Facade Restoration and Window Replacement	85023I0010	\$455,583.14
Weeksville Historical Hunterfly Houses Restoration - Contract 2 HVAC, Plumbing Work	85023I0005	\$310,713.43
Weeksville Historical Hunterfly Houses Restoration - Contract 3 Electrical Work	85023I0006	\$748,691.66
Flushing Library Replacement of Generator Day Tank	85023I0017	\$979,465.43
Grand Total		\$2,494,453.66

To: Lisa Flores, City Chief Procurement Officer
From: Michael Shipman, Agency Chief Contracting Officer, DDC
Date: June 14, 2022
Subject: Request for Approval for Use of PPB Rule Section 3-12, Innovative Procurement Method for DDC Construction Mentoring Program

The New York City (the “City”) Department of Design and Construction (the “DDC”) is hereby requesting approval to use the Innovative Procurement method, pursuant to the New York City Procurement Policy Board (“PPB”) Rule section 3-12, to solicit and award construction contracts to the participants of the DDC Mentoring Program, as explained below.

DDC intends for this Innovative Procurement method to apply to (1) the method of selecting and enrolling firms for Tier 1 (as defined below) of the Mentoring Program for Cohort 1, as well as Cohort 2, and (2) the bidding process conducted in connection with the solicitation and award of construction contracts to the construction firms participating in the DDC Mentoring Program.

1. The Nature and Requirements of the Procurement Method Being Proposed

a. Mentoring Program

Section 1206 of Chapter 55 of the City Charter¹ authorizes DDC to implement, develop, and manage a mentoring program (the “Mentoring Program”) for qualified construction Minority and Women-Owned Business Enterprises (“M/WBEs”) and small-businesses. The Mentoring Program gives DDC increased capacity to contribute to the growth of the M/WBEs and small businesses that drive the City’s economy and stimulate local communities. The City is committed to implementing reasonable procedures to secure meaningful participation of M/WBEs, as well as small business enterprises, in its procurement process. The mission of the Mentoring Program is to provide small businesses and M/WBEs in the construction trades, that are accepted into the Mentoring Program, with the opportunity to acquire knowledge about and experience with DDC construction projects to enable them, in the future, to successfully compete for DDC public work contracts that are independent of the Mentoring Program.

In accordance with Charter Section 1206, the Mentoring Program is open to qualified small businesses and M/WBEs. For Cohort 1, the 2021-2022 inaugural Mentoring Program class, DDC began accepting applications for the Mentoring Program on November 15, 2021, and the application period closed on March 31, 2022. DDC anticipates that the enrollment will be re-opened on an annual basis.

The criteria for firms that are eligible to apply to participate in the Mentoring Program are as follows:

- applicant must be a construction firm;

¹ Chapter 98 of the Laws of 2019 amended Chapter 55 of the City Charter to add Section 1206.

- applicant must be (1) a business that is independently owned and operated with annual revenue between \$150,000 and up to \$500,000; or (2) a City-certified M/WBE with annual revenue between \$150,000 and up to \$2.5 million;
- applicant must have at least two reference projects valued at \$25,000, individually, for each trade category for which such applicant desires to be included on a trade list; and
- applicant must have been in operation for one year or more.

At this time, DDC has enrolled 49 firms in the Mentoring Program — with one (1) additional firm pending final approval from the Agency Chief Contracting Officer (ACCO) — into Cohort 1 to meet the annual 25-50 participant enrollment goal. The enrollment size of Cohort 1 is 50 firms.

DDC designed the enrollment and eligibility criteria for the Mentoring Program so that it can maximize the effectiveness of the Mentoring Program. This includes setting an enrollment goal for M/WBEs of specific ethnicity and gender to combat the “disparity within disparity” phenomenon that was documented in the City of New York 2018 Disparity Study. According to the 2018 Disparity Study, Hispanic American, Native American, and Black/African American construction companies have the lowest disparity index, indicating the most significant underutilization. Conversely, non-M/WBEs are overutilized.²

Given the results of the Disparity Study that has shown that non-M/WBEs are overutilized in construction projects, this eligibility criteria ensures that the Mentoring Program benefits the entities that face the greatest hurdles in entering into the public construction market. Furthermore, the legislative findings of the enabling legislation focus primarily on businesses owned by minorities, women, and emerging businesses.³

In reviewing applications for the Mentoring Program, DDC focused on targeting Black/African American, Hispanic American, and women-owned businesses through focused outreach. Of the 49 firms enrolled in the Mentoring Program, there are 20 Asian American firms, 17 Black/African American firms, and 12 Hispanic American firms.⁴ DDC has achieved its goal of 50% enrollment of “disparity within the disparity” vendors in the Mentoring Program.

Cohort 1 consists of two groups: Group A and Group B. Group A consists of 25 firms who met the minimum eligibility criteria, and whose applications were completed and approved first. The firms in Group A were enrolled regardless of their ethnicity or construction trade, provided that they met the minimum eligibility criteria. When Group A was filled, training began for firms in Group A, and DDC began filling up Group B.

The firms enrolled in Group A were predominantly firms that performed general construction work, and not trade work. When selecting firms for Group B, DDC chose firms that met the minimum eligibility criteria, but also firms that performed work within target construction trades, such as Heating, Ventilation, and Air Conditioning Mechanical (collectively, “HVAC”) and

² Please see Table 4-9 in the Study: <https://www1.nyc.gov/assets/mwbe/business/pdf/NYC-Disparity-Study-Report-final-published-May-2018.pdf> (page 4-14 of the study).

³ See unconsolidated Section 1 of Chapter 98 of the Laws of 2019.

⁴ The firm pending ACCO approval is an Asian American firm.

electrical. This approach was necessary to ensure that the types of firms enrolled in the Mentoring Program are capable of performing the construction work that DDC expects will be required in order to execute the projects for which construction work will be procured through the Mentoring Program. Additionally, DDC focused on processing and accepting firms that were woman-owned businesses, Black/African American-owned businesses, and Hispanic American-owned businesses.

When the 25 spots filled up for Group B, all firms that were still under review, firms that did not meet the minimum eligibility criteria, or firms that did not specialize in the type of trade work that was needed to balance the pool of Cohort 1 participants, were rejected. At this time, DDC anticipates that enrollment period for Cohort 2 (2022-2023 Mentoring Program class) will open in late 2022. DDC will follow this approach for selection of Mentoring Program participants for Cohort 2 as it did for Cohort 1.

Once accepted into the Mentoring Program, the participants will be permitted to bid on construction contracts that DDC specifically selects for the Mentoring Program. The contractors participating in the Mentoring Program will be eligible to bid on select public buildings and infrastructure projects, each with an estimated construction cost of up to \$1.5 million (“Tier 1”). Contractors that successfully complete Tier 1 of the Mentoring Program will be eligible to enroll in the next tier to continue their participation in the Mentoring Program (“Tier 2”), which will permit the contractors in the Mentoring Program to bid on Mentoring Program contracts with an estimated construction cost between \$1.5 million and up to \$3 million. (Tier 2 contracts will not be procured under this Innovative Procurement Mechanism.) Furthermore, while participating in the Mentoring Program, the participants will be mentored by competitively selected mentor firms that will deliver tailored guidance and training, technical assistance, and business development services. These mentoring services will be provided to firms while they are participating in classroom portion of the Mentoring Program, as well as during the performance of the construction work.

b. Procurement of Construction Contracts

The contracts solicited to the Mentoring Program participants will be awarded to the lowest responsive and responsible bidder. However, the procurement process for the construction contracts selected through the Mentoring Program will not strictly follow Chapter 3 of the PPB Rules. Specifically, DDC intends to deviate in part from PPB Rule section 3-02 (Competitive Sealed Bidding) for the procurement of the construction contracts selected for the Mentoring Program.

Below is an overview of how DDC intends to structure the procurement process for the construction contracts bid to the Mentoring Program participants.

When creating a bid list for a specific Mentoring Program contract, DDC will review the scope of the work and the estimated cost of the contract. If the estimated cost of the contract exceeds \$1.5 million, the contract will not be included in the Mentoring Program. The bidding will be conducted only to one bid list determined by the trade that is the predominant trade in the scope

of work of the solicited contract. Each bid list will be a subset of the applicable trade list or lists, described below.

For Cohort 1, DDC is developing eight (8) trade lists of Mentoring Program contractors. There will be one list per trade for projects under \$1 million and one list per trade for projects \$1 million and over. The Cohort 1 trades will be as follows⁵:

- Concrete
- Electrical
- General Contracting
- HVAC

When creating a bid list for a specific Mentoring Program contract, DDC will add Mentoring Program contractors to such bid list based on the following standards:

- a. Length of time in Mentoring Program
- b. Inclusion on prior bid lists
- c. Status in the Mentoring Program (e.g., active versus suspended)
- d. The Mentoring Program contractor's capacity, as determined by DDC ACCO and DDC Office of Diversity and Industry Relations
- e. The ratio of firms included on the bid list from the above \$1 million trade list to firms included on the bid list from the below \$1 million trade list for the same category of work.

Once a bid list is finalized, firms included on such bid list will be notified of eligibility to bid and may submit bids following the process that mirrors the Competitive Sealed Bidding.

2. Why This Method Serves the City's Interest Better Than the Current Rules

DDC would like to address the frequent phenomenon that occurs on DDC's competitive sealed bids where a small pool of firms tends to win many contracts, while other firms bid, but do not win. It is DDC's belief that the purpose of the Mentoring Program is to diversify the pool of contractors that can competently deliver City construction projects on time and within an established budget.

The DDC Mentoring Program is as an important tool to address the ongoing significant disparity between the availability and utilization of M/WBEs in City procurement by reducing barriers to ensure that the City's procurement spending is not affected by discrimination. In administering the Mentoring Program, it is DDC's goal that upon successful completion of the Mentoring Program, the Mentoring Program participants will graduate with sufficient financial acumen, construction training, construction experience, and the necessary understanding of contracting requirements related to bonding, labor, and reporting in order to participate as prime contractors and subcontractors, not only in the City's construction projects, but also in other public and private sectors.

⁵ The Mentoring Program Cohort 1 does not have any plumbing firms.

3. The Time Within Which This Method Will be Implemented and Utilized

Depending on availability of the construction projects, it is anticipated that the use of this innovative method will result in registered construction contracts beginning in the third quarter of Fiscal Year 2023 (beginning of calendar year 2023). The method will be in use until permanent rules are promulgated governing the Mentoring Program and the selection and award of construction contract to the Mentoring Program participants.

4. Description of the Services to be Procured and Approximate Dollar Value of Contracts

In Tier 1, the contractors participating in the Mentoring Program will be eligible to bid on select Public Buildings and Infrastructure projects, each with an estimated construction cost of up to \$1.5 million.

Based on the above, I have determined that the proposed innovative method constitutes an appropriate procurement method under Section 3-12 of the PPB Rules.

Requested by: Michael Shipman (Signature)
Agency Chief Contracting Officer

6/15/2022 (Date)

Approved by CCPO: [Signature] (Signature)

6/17/22 (Date)