

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 August 2, 2013, and the required public hearing was held on September 10, 2013. The amendments were adopted by the Procurement Policy Board on October 24, 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.

PPB Rule 2-09 sets forth the requirements for the Recommendation for Award prepared by the agency’s contracting officer. In light of recent amendments to PPB Rules, 9 RCNY §§ 3-02 and 3-03, which give agencies the option to award goods and standard services based on best value to the City instead of lowest bidder, the proposed amendment to Rule 2-09 adds the requirement that the Recommendation for Award set forth the criteria used in determining best value if an award is made to a bidder whose bid represents the best value to the City.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this office, unless otherwise specified or unless the context clearly indicates otherwise.

The Proposed Rule Amendments

New material is underlined and deletions are [bracketed].

§3-05 Sole Source Procurement.

(a) *Conditions for use.* Sole source procurement shall be used only when there is only one source for the required goods, service, or construction. In such case, the accepted price and terms and conditions shall be achieved through negotiation between the agency and the vendor. This section shall apply to all sole source procurements over [\$2,500] \$20,000.

(b) *Determination.* Prior to entering into sole source negotiations, the ACCO shall make a determination that there is only one source for the required good, service, or construction.

(1) [For sole source procurements of \$10,000 or less for goods and services and \$15,000 or less for construction and construction-related services, s] Such determination shall include a description of the process by which the agency made such determination, [.

(2) For sole source procurements above these amounts, such determination shall also include] a description of the efforts made to ensure that offers were solicited from other sources, and where applicable, a statement of intended actions to develop competition in

the future. The agency shall also perform a presolicitation review pursuant to §2-02.

[(3)] (2) A copy of the determination shall be forwarded within five (5) days of completion to the Comptroller.

(c) *Public notice.* (1) *Notice of intent to enter into sole source negotiations.* If expressions of interest are received they shall be evaluated and, if it appears that the good, service, or construction is available from more than a single source, a solicitation shall be issued in accordance with Chapter 3 of these Rules.

(i) *Frequency.* After the ACCO determines that this procurement method will be used [for purchases in excess of \$10,000 for goods and services and \$15,000 for construction and construction-related services], notice of the intent to enter into negotiations shall be published in the City Record for five (5) consecutive editions no fewer than ten calendar days before negotiations are expected to begin and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. Such notice shall solicit expressions of interest from vendors qualified to compete on that procurement or in the future. This subdivision shall not apply in cases where Corporation Counsel has provided a written statement that such notice may jeopardize pending litigation or collective bargaining.