
BASIC METHODS OF PURCHASE

CHAPTER 3

For the most part, City procurements can be separated into three basic categories.

1. Small Purchases

If the value of a purchase is \$25,000 or less for goods and services, \$50,000 or less for construction and construction-related services, and \$100,000 or less for information technology products and services, small purchase procurement procedures may be applied. Small purchase procurements are not formally advertised in the City Record, however, notification to certified M/WBE's and other small suppliers of upcoming small purchases is made by the Department of Business Services pursuant to their Bid Match program (Chapter 7).

These procurements require, at a minimum, that five suppliers be solicited at random from the appropriate bidders list to provide either oral or written quotations. An agency may additionally solicit suppliers who have responded to prior solicitations or whose names have been obtained through referrals from other City agencies, commercial buyers or general market research.

Under the small purchase procedures, responsive bids or acceptable offers must be obtained from at least two suppliers unless the contracting officer determines in writing that a single price is fair and reasonable and that other suppliers had a reasonable opportunity to respond. The responsibility standards defined later in this section apply equally to small purchases.

2. Competitive Sealed Bidding

A sealed bid purchase involves competitive bids and public opening of bids. Sealed bidding is NOT an auction. It is the preferred method of source selection in New York City. It is used when the value of a procurement is more than \$25,000 for goods and services, \$50,000 for construction and construction-related services and \$100,000 for information technology products and services.

Integral to the competitive sealed bidding process are the following factors:

- The award is made on the basis of the lowest price and price related factors.
- There is, generally, no need for discussion with the bidders; bids stand and are evaluated as submitted. However, price negotiation with the low bidder is permitted under exceptional circumstances.
- The City can reasonably expect to receive more than one bid.
- Bids must be responsive to the solicitation requirements.

When participating in sealed bidding, you will be relying exclusively on information contained in the solicitation, called an Invitation for Bid (IFB), and in documents cited in the IFB.

You will need to review this information carefully to make sure your price is both competitive with other bids and profitable for you.

Unless vendors will be solicited from a prequalified list, solicitations for competitive sealed bids must be formally announced and advertised. Formal advertising is done by announcing the contract opportunity in the *City Record* and the City's homepage, <http://www.ci.nyc.ny.us> After clicking on "Selling to New York City Agencies", click on Procurement Bulletin Board System.

Preparing Your Bid

Responding to a solicitation may require considerable time and effort. If the bid is not filled out and signed correctly, it will be rejected as non-responsive. However, there are some things you do not have to do. For example, you do not have to prepare a transmittal letter (unless specifically required). It's actually better if you don't. You can fill out the IFB by hand (in ink), rather than typing it.

The following are some pointers that can help you prepare your bid thoroughly, efficiently, and on time.

Give Yourself Enough Time

Start working on your bid as soon as you receive an IFB, and allow extra time for unanticipated but essential consultation, checking, and rechecking. This is particularly important if the contract is large or if you must obtain and read several documents before making a bid.

Even if everything goes smoothly, and you finish sooner than expected, you'll need time to thoughtfully review and, if necessary, revise your bid.

Be Sure You Understand the IFB

Read the solicitation document carefully. To make a realistic bid, and fulfill the contract to the mutual benefit of you and the City, you must understand all instructions, specifications, clauses, and other documents.

If in doubt about the meaning of any part of a solicitation, make no assumptions. Direct your questions to the contracting officer named in the solicitation.

Obtain the Necessary Related Documents

The solicitation package should indicate where to obtain all essential specifications, standards, and other documents cited in the solicitation. If it doesn't, ask the contracting officer.

Develop a Work Plan and Delivery Schedule

By making a work plan and schedule at this stage, you can better calculate the time and material costs of performing under the contract plus any other information you'll need in determining your bid price. Also, some solicitations require a schedule of work as part of the offer. Note the distances to the locations where you'll be shipping products, and be sure you are able to meet the delivery schedule your bid promises.

Determine Costs

After using your work plan and schedule to arrive at a preliminary cost estimate, review the estimate to be sure it reflects other important cost factors. What are the market forecasts for the period when you'll be supplying goods or services? Are the costs of raw materials and/or labor rising? Do you expect transportation costs to remain stable?

Most solicitations give you an opportunity to offer a discount for prompt payment. Decide whether you can afford to make such a discount as part of your offer.

Compile Other Information Requested in the IFB

Some solicitations will require information about your firm's financial stability and relevant experience. Make sure that any information you supply meets the requirements and is complete and accurate. Submission of incomplete information or not complying with other solicitation requirements are common causes of nonresponsiveness determinations in City solicitations.

Review Your Bid

After you've prepared your bid, review it for clarity, consistency, and accuracy. Compare your work plan, budget, and schedule to be sure they're in agreement. For example, if your plan indicates that it will take 20 days to complete a task, your budget and schedule should reflect this level of effort. Double check cost figures and computations, and make sure nothing has been left out. **Any changes made to any of the figures on the bid document must be initialed in ink. If you don't do this, your bid will be thrown out as non-responsive.**

Submitting Your Bid

When you're ready to submit your bid, review the submission instructions, including envelope labeling.

Double check the address where the bid is to be sent, and allow yourself enough time to meet the deadline. **Late bids are disqualified under all circumstances, however, there is some flexibility when using the competitive sealed proposal method of solicitation.**

If you're having the bid hand-delivered, make sure you have the right room number and meet any other special requirements for hand delivery. Don't rely on city personnel to deliver the bid for you!

Bid Withdrawal

You may withdraw your bid any time until the bid opening. However, once the bids have been opened, you may only withdraw your bid as prescribed in the solicitation document. Under certain defined circumstances, i.e., "minor informalities," the contracting officer may allow correction of your bid only when you can substantiate the existence of the mistake, the manner in which it occurred, and the bid you intended to make. A mistake in bid after opening is seldom, if ever, allowed to be withdrawn if it is the apparent low bid.

Bid Opening and Contract Award

All bids in response to an IFB are kept unopened by the agency until the contract award is to be made.

At the time set for opening, a contracting official at the award site announces that the time has arrived. He or she opens the bids, reads the bids aloud, and records them. Interested persons may be permitted to examine the bids at this time, but will not be given access to financial or other proprietary information within the text of the bid document.

After the bids have been opened, they are evaluated and award is made, on a fixed-price basis, to the bidder who submitted the lowest responsive and responsible bid.

RESPONSIVE AND RESPONSIBLE BIDDERS

Responsive and Responsible Bidders

The low bidder in a sealed bid solicitation has two final hurdles to clear before receiving a contract award. These are the “responsive” and “responsible” bidder requirements. Essentially, these mean that the bidder must have followed the submission rules correctly and must be able not only to fulfill all contract requirements but also have the integrity to justify the award of public tax dollars.

If the contract is small and uncomplicated, these determinations may be made shortly after the time the bids are opened. Large contracts involving a number of products or services may require further evaluation before they can be awarded.

Responsive means that the bid was submitted on time and prepared according to the instructions and requirements of the IFB. Problems that would cause a bid to be judged nonresponsive are listed in the Section 2-07 of the Procurement Policy Board Rules and in Chapter 8 of this manual (see Page 67).

Failure to conform to the requirements of the IFB, such as specifications, delivery schedule, or permissible substitutions or conditions imposed by a bidder that would modify requirements of the IFB or give the bidder an advantage over other offerors would all be nonresponsive. Further, a bid accompanied by a notice that a product is subject to prior sale or that prices are subject to change without notice will usually be rejected as nonresponsive. Bids that do not specify a definite price will also be rejected along with any failure to submit adequate bid security when required.

The Procurement Policy Board rules in Section 2-08 mandate that “purchases be made from, and contracts shall be awarded to, responsible prospective contractors only.”

A “responsible contractor”, under the rules, is defined as “one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars.” The review of a bidder’s responsibility could include assessments of a firm’s plant and testing facilities, production capabilities, quality control, financial status, credit rating, performance on previous City contracts, and integrity. Vendex is a key ingredient of many of our responsibility determinations.

Suppliers can appeal agency determinations of non-responsiveness and determinations of non-responsibility. How you make these appeals will be discussed in Chapter 8 of this manual.

Awards to Other Than the Lowest Responsive and Responsible Bidder

The Rules provide that an award may be made to other than, or in addition to, the lowest responsive and responsible bidder, when the Mayor determines that it is in the best interest of the City to do so. However, this is seldom if ever done.

When an award to other than the lowest responsive and responsible bidder is made, public notice of this determination and award are published in the *City Record*.

SEALED BID CHECKLIST

Socio-Economic Provisions

There are several socio-economic provisions that have been included in our standard contract provisions.

Recycling Preference: Suppliers who offer products made with recycled material may be eligible for a price preference up to 10% for paper products and 5% for non-paper products. Standards for the minimum content of recycled material required for price preference eligibility are generally contained in the Invitation For Bid (IFB). This program is administered by DCAS/DMSS.

McBride Principles Provision: Where the lowest responsive and responsible bidder is unable to certify that they adhere to the McBride Principles, the City of New York offers a 5% preference to suppliers willing to sign a rider supporting the City's opposition to employment discrimination practices in Northern Ireland.

Sealed Bid Checklist

The following is a checklist of items you should review prior to submitting your bid for our consideration.

1. Do you understand all requirements of the basic specification and all other specifications, documents, and attachments to the solicitation?
2. Have you read all materials referred to but not included with the solicitation?
3. Have you rechecked your answers, your math, and your price quotes to make sure they are accurate and complete?
4. Have you verified unit prices and inserted them in the proper places?
5. Are you confident that you can meet all contract requirements (such as materials used, manufacturing procedures, quality levels, testing, packaging)? And is your bid price enough so you can meet these requirements and still make a reasonable profit?
6. Have you answered every question fully and accurately and supplied all information requested, especially on the VENDEX disclosure form? (**VENDEX: Section 6-116.2 of the NYC Administrative Code establishes a computerized data base containing information on contractors that do business with the City. As a result, suppliers are required to complete a VENDEX questionnaire when awarded a contract valued at \$100,000 or more; on a sole source contract valued at \$10,000 or more; or when their aggregate business with the City in the proceeding 12 months totals \$100,000 or more. If you fail to submit these documents, you may be deemed non-responsive and may not receive the award. Questions regarding the submission or completion requirements of VENDEX questionnaires should be directed to the Mayor's Office of Contracts at (212) 788-0055.**)

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7. Have you refrained from qualifying your bid by adding or taking exceptions to the bid documents. Additions of unwanted part numbers, exceptions to items and conditions of the solicitation, or inclusion of any type of contingency statement will result in your bid being declared nonresponsive.
 8. Have you signed in ink and dated the solicitation in all sections where required, including any certifications that apply to your business? Remember, that a letter of transmittal is not necessary. Proper and accurate completion of the forms provided is all that is necessary.
 9. Have you properly acknowledged, signed, and returned to the purchasing office all amendments to the solicitation?
 10. Have you included bid security, if required by the solicitation? Is the bid guarantee properly executed and in the proper amount?
 11. Have you included a fully executed insurance certificate evidencing the coverages required by the solicitation?
 12. Have you correctly addressed the envelope containing your bid to the receiving office listed in the solicitation?
 13. Have you allowed enough time for the bid to reach the receiving office before the posted deadline?
 14. Have you placed sufficient postage on the envelope used for returning your bid?
 15. If you plan to have the bid hand-delivered, do you have the room number and other information necessary to get the bid to the right place before the time set for the bid opening?
 16. Do you have at least one file copy of the final version of your bid?
 17. Have you retained your original worksheet used in preparing your bid?
 18. Have you entered all your entries in ink and signed and notarized your bid? Have you initialed in ink any corrections to errors?

3. Competitive Sealed Proposals

The most flexible, but sometimes complicated, means of procuring goods and services is by competitive sealed proposal, sometimes called “Request for Proposal” (RFP). This method is used when the City is unable to define all the requirements of a procurement or when factors in addition to price are important enough to require evaluation. In an RFP process, an agency may decide to conduct discussions with offerors or to award a contract without discussions. The RFP must state all of the evaluation factors, including price and their relative weight. Factors not specified in the RFP can’t be considered in the evaluation.

What is an RFP?

A Request for Proposals (RFP) is the solicitation package containing the information necessary for prospective contractors to prepare proposals. Most RFPs follow the same format as Invitations for Bids (IFBs), however, there are some special rules for architect/engineer services that will be discussed later in this chapter.

In response to an RFP, prospective contractors submit their price, plus a technical proposal spelling out how they will fulfill the need described in the solicitation. RFPs include the criteria by which proposals will be evaluated by an Evaluation Selection Committee.

The recommendations for preparing a bid (under “Sealed Bid Checklist”) similarly apply to preparing your proposal. When you respond to an RFP, pay particular attention to the evaluation criteria and the relative importance of each factor. If more emphasis is placed on a “workplan,” for example, that part of your proposal should be developed with special care.

What is Negotiation?

The negotiation procedure within the RFP process permits bargaining between the agency and the offerors before the final award of a contract. Depending on the size and complexity of the requirement, negotiation may include discussion; persuasion; changes in positions; and give-and-take on price, schedule, technical requirements, type of contract, or other contract terms.

Contracting officers use RFPs whenever sealed bidding is not appropriate; that is, whenever it is not practicable or advantageous to use sealed bidding. Generally, RFPs will be used if the award will be based on factors other than price alone or if discussions are necessary. When this is done, it is considered a “Special Case” under our Rules requiring more oversight before the contract can be implemented.

How Suppliers are Selected

In selecting among offers submitted in response to an RFP, the evaluation committee considers not only price, but also the offeror’s ability to carry out the terms of a contract. Selection includes the evaluation of initial technical and cost/price proposals and may additionally include, discussions between the agency and offerors, and the submission and evaluation of “best and final offers.”

Evaluation of Proposals

City agencies evaluate proposals based on the factors as specified in the solicitation. These may include work plan, proposed contract personnel, the offeror’s experience, price quotations, quality, and other criteria. Selection is based on the evaluation of proposals by a selection committee or review panel, composed of a minimum of 3 persons qualified to evaluate the proposals, who rank offerors according to the set criteria.

Where award will not be based on only the evaluation of initial proposals, the agency, under the direction of its Agency Chief Contracting Officer, will determine which proposals are competitive enough to remain under consideration sometimes called the “Competitive Range.” Offerors whose proposals are judged to be outside the competitive range are notified in writing that their proposals are no longer being considered.

Discussions

Discussions may include issues related to the offeror's technical proposal, price or other terms and conditions of the proposed contract. Auctioning, leveling or technical transfusion are not permitted.

Best and Final Offer (BAFO) and Award

After conclusion of discussions, offerors are invited to submit "best and final offers." At this time, offerors can make their prices as competitive as possible and address questions and concerns specifically raised during discussions.

Qualifying for Consideration

Just as in sealed bidding, an offeror must be considered responsible in order to receive a contract. Responsiveness in RFPs does not play as significant a role as it does in competitive sealed bidding.

Responsible Offers

In determining responsibility, the Agency Chief Contracting Officer will consider a firm's plant and testing facilities, production capabilities, quality control, financial status, credit rating, performance on previous City contracts, and business integrity.

Selection Process for Architects/Engineers

Construction work is generally awarded by competitive sealed bidding. Contracts for the award of architectural and engineering services are generally awarded by competitive sealed proposal. The City divides its architectural and engineering services into two categories: Non-Complex and Complex. Different methodologies apply to each depending on how an agency defines its non-complex work. You should contact the Agency Chief Contracting Officer to determine what type of work falls into each category. All methodologies are heavily dependent upon your being placed on the appropriate prequalified list.

A. Non-Complex Work

If you are interested in non-complex work, the agency may select you in two ways. Under the first alternative, you may be selected randomly from the appropriate prequalified list and offered the project on the basis of a fee-curve developed by the agency and approved by the Office of Management and Budget (OMB). You will have seven days to accept or reject the project.

Under the second alternative, the agency prepares an RFP and solicits technical and cost proposals from a minimum of three suppliers selected randomly and/or rotationally from the appropriate prequalified list. Under this scenario, suppliers have at least fifteen (15) days to respond. After evaluation, the agency will enter into negotiations with those suppliers offering the best combination of technical quality and price.

B. Complex Work

Standard RFP procedures are used for complex work. Under this technique, suppliers can be selected randomly, rotationally and/or based on a "best qualified" determination from the appropriate prequalified list. Anytime the agency elects to use a "best qualified" technique to select proposers, either alone or in combination with random or rotational selection, a minimum of five proposers must be selected. However, when

OTHER TYPES OF PURCHASES

best qualified is not used, a minimum of three proposers is required. Suppliers have at least twenty (20) days to respond, after which the agency evaluates proposals and enters into negotiations with the supplier(s) offering the best combination of technical quality and price.

C. The Federal Brooks Act generally does not apply to City Procurements

Contractors often ask us what applicability the Federal Brooks Act has, if any, on the City's procurements of A/E services. Under the original Brooks Act, when the Federal Government makes the final selection of the architect/engineer firm for the project, the contracting officer notifies the first-ranked A/E firm of its selection and sends the firm a request for a fee proposal/suggested contract terms for payment by the Federal Government and a copy of the proposed contract. The contracting officer would then ask the A/E firm to furnish the salary rates and overhead rate for the firm and its major consultants.

After the government has evaluated the fee proposal, it finalizes or further negotiates the contract terms resulting in a definitized contract.

This act has limited applicability in City procurements which are covered by the Procurement Policy Board Rules. The Brooks Act would only apply when our projects are state or federally-funded and only then, when specifically directed by the terms of the federal or state grant or loan. Any applicability of the Brooks Act will be defined in the solicitation.

Other Types of Purchases

1. "Micro" Purchases \$2,500 and less

Procurements valued at \$2,500 and less, require no advertisement or competition. However, in making these purchases, contracting officers must ensure that the non-competitive price is reasonable and that purchases are distributed appropriately among qualified suppliers.

2. Emergency Purchases

Emergency procurements are authorized when there is an unforeseen danger to life, safety, property or a necessary service. Emergency procurements require the contracting agency to obtain the prior approval of the Comptroller's Office and Corporation Counsel in the form of a "Declaration of Emergency" which, in effect, short-cuts the competitive process. The agency is required to use as much competition as is practicable under the circumstances. Contact each agency to determine how you can compete for these purchases.

3. Sole Source Procurements

Sole source purchases may only be made where the City's requirements are available from only one source of supply. Sole source is the least preferred method of source selection and is virtually discouraged everywhere.

Sole source procurements exceeding \$10,000 for goods and services and \$15,000 for construction and construction-related services require advance public notice in the *City Record* (Note: 5 consecutive editions at least ten (10) days before entering into negotiations) that solicits expressions of interest from other qualified suppliers.

If expressions of interest are received in response to this public notice, they must be evaluated in order to determine whether the procurement is, in fact, a sole source or whether the requirements can be supplied by more than one supplier. In the latter case, the City will issue a competitive solicitation.

4. Negotiated Acquisition

Under this method of source selection, an agency is permitted, under limited circumstances, to forego the competitive sealed bid and competitive sealed proposal processes and conduct negotiations with all responsible contractors who have expressed an interest in the needed work. Negotiated Acquisition now applies to ALL categories of procurement. This technique is primarily used, under the following limited circumstances:

- time-sensitive situations;
- limited number of suppliers available and able to perform the work;
- compelling need to extend a contract; and
- legal, construction, and investment fund services.

As with the other methods of source selection, the agency, through its Chief Contracting Officer, determines when this method of source selection would be appropriate for the circumstances and as an alternative procurement, requires the prior approval for its use by the City Chief Procurement Officer.

5. Demonstration Projects for Innovative Products, Approaches or Technologies

A demonstration project is a short term carefully planned pilot exercise designed to test and evaluate the feasibility and application of an innovative product, approach or technology not currently used by the City. Demonstration projects are a means of testing new ideas, products and approaches to improving quality. A demonstration project may be proposed for goods, services or construction and may be initiated by an unsolicited proposal. It is up to the Agency Chief Contracting Officer to decide whether or not to proceed with a demonstration project. This may necessitate discussions, and will require formal public notice and approval by the City Chief Procurement Officer before entering formal negotiations with the supplier. Resultant contracts generally will not exceed one year unless the Agency Chief Contracting Officer makes a determination to the contrary.

6. Innovative Procurement Methods

This rule allows for testing an innovative procurement method not currently provided for under the PPB Rules. In order to utilize this method, the Agency Chief Contracting Officer must describe the nature and requirements of the proposed procurement method and explain why its use is in the City's best interest. As with other alternative procurements under the Rules, the City Chief Procurement Officer must approve the use of the new method.

7. Government-To-Government Purchases

This rule allows the city to purchase, with the prior approval of the City Chief Procurement Officer, from another governmental entity provided that such purchase is in the best interest of the City as determined by the Agency Chief Contracting Officer.