
VENDOR RIGHTS & RESPONSIBILITIES

CHAPTER 8

As a supplier to the City of New York, there are certain rights you have when you do business with us. There are also responsibilities. These responsibilities center on your keeping your promises and doing what you say you were going to do in your bid or in your proposal and subsequent contract. Keeping your word is important to us. If your performance complies with the terms and conditions of your contract and you deliver quality products and services, you will have greater opportunities to enjoy the benefits of City contracts.

This Chapter is intended to explain your rights as well as your responsibilities.

YOUR RIGHTS

Your Right to Compete

You have the right to “full and open competition.” What this means is that all suppliers are given an equal opportunity to compete for our business. We not only send notices of solicitation to suppliers on our bidders lists but also advertise in the **City Record** and sometimes in other trade journals and newspapers.

Your Right to Know

You have the right to information. What this means is that you have a right to know how your government operates. The Freedom of Information Law (“FOIL”) provides rights of access to records reflective of government decisions and policies. With few exceptions, most documents are available. An agency may ask that you make your request in writing. The law merely requires you to “reasonably describe” the record in which you are interested. Within five business days of the receipt of a written request for a record reasonably described, the agency must make the record available, deny access in writing giving reasons for the denial, or furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. An agency may deny your request but you have the right to appeal this decision within 30 days of a denial. More information on the Freedom of Information Law (“FOIL”) can be found in the pamphlet “Your Right To Know” which can be obtained from the:

**Committee on Open Government
New York State Department of State
41 State Street
Albany, New York 12231
Tel: (518) 474-2518**

Your Right of Protest & Appeal

Under the Procurement Policy Board Rules, you have the right to lodge a protest of solicitation or award or appeal an agency determination of non-responsiveness, non-responsibility or denial or revocation of prequalification.

Protests of Solicitation or Award

You have the right to protest solicitations and awards. Any prospective bidder or proposer who believes there has been unfairness or irregularity in the solicitation or award of a contract may bring a protest to the Agency Chief

Contracting Officer. The written protest should state all the facts upon which the agency decision is contested and may be submitted at any time during the procurement process but no later than ten (10) days after the award is published in the **City Record**.

The Agency Chief Contracting Officer considers the vendor's protest and writes a prompt decision. The Agency Chief Contracting Officer may also convene an informal meeting with the vendor and appropriate agency personnel to explore the issues prior to reaching a decision.

Upon making a decision, the Agency Chief Contracting Officer promptly notifies the supplier in writing of that determination and the vendor's right to appeal to the agency head.

A supplier has five (5) days from receipt of the Agency Chief Contracting Officer's determination to file a written appeal. The Agency Head reviews the appeal and makes a prompt written decision notifying the supplier. The Agency Head's decision of a vendor's appeal of the Agency Chief Contracting Officer's decision is final. Documentation is kept on file in the agency and copies of these documents are also sent to the City Chief Procurement Officer.

Example: A supplier who believes the specifications are stated in a way that restricts competition, or believes another supplier has concealed negative information about its background, may bring these facts to the ACCO's attention through a protest.

Appeals

There are three types of appeals under the Procurement Policy Board Rules: an appeal of non-responsiveness; an appeal of non-responsibility and an appeal of denial or revocation of prequalification.

Appeals of Non-responsiveness

Non-responsiveness is defined as a bid or proposal that does not meet the requirements of the solicitation document. Non-responsiveness may result from failing to comply with any one of the following standards, all of which are appealable.

<u>Type of Non-Responsiveness</u>	<u>Appeal Rights</u>
1. Non-compliance with material requirements of specifications	Yes
2. Non-compliance with material terms and conditions of solicitation	Yes
3. Failure to sign in ink or provide all required pricing information	Yes
4. Alterations that have not been initialed in ink by the bidder or proposer	Yes
5. Late bids/proposals	Yes
6. Failure to submit bid security, if required	Yes
7. Failure to submit samples, literature or other information required by the solicitation	Yes
8. Failure to submit <u>all</u> required disclosure statements	Yes
9. Failure to attend mandatory presolicitation conference and/or site visit	Yes

Upon making a determination of non-responsiveness, the contracting officer promptly notifies the apparent lowest bidder in writing. A bidder is allowed five (5) days from receipt of the agency notice to file a written appeal with the Agency Head. The Agency Head considers the supplier's appeal and makes a prompt written decision concerning the merits of the appeal. The decision by the Agency Head on matters of appeals of non-responsiveness is final.

Example: An Agency requests a particular brand of soup to feed prison inmates and states so in the solicitation. The supplier proposes a different one in the bid. The agency would find this bid non-responsive.

Appeals of Non-responsibility

A responsible supplier is one that has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars.

There are both general and specific standards that may affect a supplier's responsibility such as: financial resources; technical qualifications; experience; equipment & facilities; a satisfactory record of performance, to name a few.

Specific standards may be established by the agency on a case by case basis and must be disclosed in the solicitation.

When an agency finds a prospective supplier non-responsible, the supplier is given ten (10) days from receipt of the agency notice to file a written appeal with the Agency Head. The Agency Head then considers the supplier's appeal and makes a prompt written decision concerning its merits. If this appeal is denied by the Agency Head, the supplier may further appeal this decision to the Mayor who is represented by the City Chief Procurement Officer. The supplier is allowed ten (10) days after receipt of the Agency Head's decision to file a written appeal with the City Chief Procurement Officer. The City Chief Procurement Officer reviews the supplier's appeal and gives a prompt written decision which is final. If the City Chief Procurement Officer sustains the determination of non-responsibility, that determination is required to be placed in the VENDEX data base.

Example: An Agency upon doing a routine background check learns that the supplier has not paid City taxes for several years; this supplier would be deemed non-responsible.

Appeals of Denial or Revocation of Prequalification

If a supplier is denied prequalification, or has its prequalification status revoked by an Agency Chief Contracting Officer, the supplier can appeal the decision to the Agency Head within ten (10) days of receipt of the written notice from the agency.

The supplier's appeal must be in writing, outlining the reason why the supplier believes the appeal is valid, and should include all supporting documentation.

The Agency Head considers the supplier's appeal and promptly makes a written decision with respect to its merits. A copy of the Agency Head's decision is sent to the supplier, along with an explanation of the supplier's right to appeal that decision and how to do so.

If the supplier decides to appeal the Agency Head's decision, that appeal must be made within fifteen (15) days of the Agency Head's decision to the Office of Administration Trials & Hearings (OATH), 40 Rector Street, 6th floor, New York, New York 10006. Their telephone number is (212) 442-4900.

PROMPT PAYMENT

When an appeal from a supplier relates to a Division of Labor Services (DLS) determination of non-compliance with applicable EEO requirements, DLS reviews all appeals and will inform the Agency Head of its decision regarding the supplier's appeal.

You Have the Right to be Paid Promptly

Every contract or purchase order has instructions for preparing and submitting invoices. If the instructions are not complete or clear, call your agency contact immediately. It's a good idea to confirm invoicing procedures the first time you submit an invoice under a contract. Careful attention to these procedures such as correctly filling out the paperwork, submitting it to the right billing office and of course, performing the job you were hired to do according to the specifications set forth in the contract will help ensure that you get paid on time.

Who is Subject to Prompt Payment

All City agencies are subject to the Prompt Payment provisions of the Procurement Policy Board Rules. These Rules generally require that suppliers be paid within 30 (thirty) days (Note: all change order payments plus substantial completion and final payments for construction are 60 (sixty) days after the receipt of a proper invoice or acceptance of the goods whichever is later, otherwise such payments will be subject to interest. The City, as a matter of policy, will not pay interest for amounts less than \$25.00. **The grace period which formally existed was eliminated on July 1, 2000.**

You Will Not Be Paid if Your Contract Has NOT Been Registered

It is very important for you to understand that if the City has not registered your contract (Note: this is the process by which City funds are encumbered for a specific purpose) with the Comptroller, no work can be authorized and if you do perform the work, there is no mechanism for you to be paid. So, before you begin any work, make sure you have a registered contract for purchases in excess of the small purchase limits and a purchase order for small purchases.

How the City Changes its Interest Rate

The Comptroller and OMB review the interest rate every six months (January & June of each year) and make changes based on market conditions. Not all payments are subject to this interest rate. Some "object codes" have been set at "0" interest and in some circumstances, interest can be deferred.

To determine interest eligibility on specific categories of "expense" type items, obtain a copy of the "Vendor Payment Guidelines." This booklet may be obtained from the Procurement Policy Board, 51 Chambers Street, Rm 1126 NYC 10007. Their telephone number is (212) 788-7820.

YOUR RESPONSIBILITIES

You Have the Right to Appeal Your Contract Disputes with an Agency

There is a multi-step process under which the City handles its disputes. These steps, if your dispute has either not been settled by the Agency or later on in the process by the Comptroller, will lead you ultimately to the Contract Dispute Resolution Board (CDRB). The CDRB process has been designed as a substitute for litigation. The CDRB reviews appeals and is required to make a final decision within forty-five (45) days after hearing the supplier's appeal (includes all written appeals and oral arguments).

The CDRB is an arbitration board composed of two City representatives and a neutral selected by the Office of Administrative Trials & Hearings (OATH) from a list of prequalified individuals OATH maintains. The dispute panel is chaired by an OATH presiding judge with appropriate participation by the City Chief Procurement Officer or Director of the Office of Construction. A decision in favor of the supplier will be subjected to prompt payment interest, if the judgment is not paid within thirty (30) days after the date the parties are formally notified of the CDRB's decision.

Since it will take some time to complete all of the required steps, we urge you and the agency to settle this dispute as early in the process as possible.

YOUR RESPONSIBILITIES

You basically have only one responsibility under our contracts and purchase orders and that is the responsibility to perform.

Satisfactory Performance

For satisfactory contract performance, you must understand the requirements of your contract and follow all of the procedures and instructions carefully. A supplier's record of performance becomes an important part of the procurement file.

Rejections, late deliveries, and other failures of performance will be noted by other agencies as they review performance records to determine the responsibility and eligibility of firms for future contracts. If your performance is satisfactory and you deliver quality products and services, you will have more opportunities for City contracts.

Less Than Satisfactory Performance

Every City agency is responsible for monitoring supplier performance and required to prepare written reports of supplier performance including substantiating claims of marginal or unsatisfactory supplier performance. These reports are entered into the VENDEX system which contains both satisfactory and unsatisfactory supplier evaluations.

There may be any number of reasons for a determination of unsatisfactory or marginal performance by an agency. Here are only a few examples. Unsatisfactory performance is generally a failure to:

- meet the contract performance deadline
- perform the work in a professional manner
- conform to specifications
- respond adequately to all inquiries
- charge the correct price
- submit change orders, schedule and payment requisitions on a timely basis and comply with safety standards, labor standards and prevailing wage requirements for construction.

What Can Happen as a Result of Poor Performance

As we stated earlier, the City is committed to doing business with suppliers whose performance has been at least satisfactory. That's what this manual is all about. Conversely, the City strives not to do business with vendors whose performance has not been satisfactory.

Termination for Default

If your performance has been found to be unsatisfactory, you may be terminated for default. Should this occur, we will terminate your contract, find another supplier to complete your contract and charge you the difference in price if that price is higher than the contract price. Moreover, an unsatisfactory performance report will be prepared and although you will be given an opportunity to rebut what is said in the report, all the information will be loaded into the VENDEX database for other agencies to see and evaluate accordingly in making their procurement decisions.

Suspension and Debarment

A supplier who performs poorly runs the risk of being debarred. Debarment means being excluded from doing business with the City. Debarment can occur for any number of reasons aside from unsatisfactory performance.

Most of the grounds for debarment involve a failure to meet the City's business integrity standards such as making false statements on our VENDEX forms; fraud, embezzlement, theft, bribery, collusion on prices, or any other offense that indicates a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a supplier to the City.

Debarment proceedings may be initiated at any time by an Agency Head after first consulting with Corporation Counsel. In order to start the debarment process, except for prevailing wage violations which are directly handled by the Comptroller, the Agency Head petitions the Office of Administrative Trials and Hearings (OATH) requesting that a person or firm be barred (excluded) from consideration for a period not to exceed five years. The agency petitioning OATH, may at the same time, suspend that person or firm from consideration for the award of contracts with the City, while the debarment petition is being considered by OATH for a period not to exceed three months. This decision is made by the Agency Chief Contracting Officer and can be appealed to the Agency Head whose decision on suspension is final.

Suppliers being debarred are sent notice of the proposed debarment action. The supplier is required to file an answer within the time provided by the rules of OATH, and may request a hearing. The proceedings are governed by the rules of OATH, and are to proceed as quickly as possible consistent with fairness to the parties.

If you are suspended or debarred, your name will appear among the list of debarred businesses appearing monthly in the City Record. This list can be used by other state and municipal entities and even the Federal Government to determine issues of responsibility. Debarment is a place you don't want to be.