

On September 19, 2024, the PPB voted this rule into CAPA

Statement of Basis and Purpose of Final Rules

The proposed Procurement Policy Board (PPB) amendments would update the provisions of the PPB Rules relating to electronic bidding. Electronic bidding (e-bidding) allows vendors to electronically bid on a city agency's solicitations, instead of submitting paper bids.

On March 1, 2024, GML § 103 was amended to allow an agency of a city with a population of one million or more to authorize or require the electronic submission of bids and offers for any public contract. The legislation also allows for the public opening, reading, and identification of bids and proposers through online livestreaming and by posting an online record of such bids or proposals.

These rule amendments that permit electronic bidding for construction contracts as authorized by GML § 103 would result in a more efficient bidding process by allowing bids and proposals to be opened electronically via livestream, revised more easily and processed more quickly by agencies, and ultimately streamline the procurement process.

Additionally, these rule amendments update the definition of "In Ink" and include a new definition of "Electronic Signature," and update relevant PPB sections to include both definitions for clarity and consistency.

Section 1 amends PPB Rule § 1-01 to update the definition of "In Ink" to only include signatures made with pen and add a new definition for "Electronic Signature."

Section 2 adds a new PPB Rule § 1-05 providing that electronic signatures shall have the same effect as signatures signed in ink.

Section 3 amends PPB Rule § 2-07(c)(3) and (4) to add "Electronic Signature."

Section 4 amends PPB Rule § 3-02(b)(2)(i) to allow agencies discretion regarding bid submission.

Section 5 amends PPB Rule § 3-02(d)(1) to allow agencies discretion to determine the bid submission format by removing paper requirements.

Section 6 amends PPB Rule § 3-02(e)(1)(i)(F) to provide the option to include a link to access the livestreaming of the opening, reading, and identification of bids in a notice of availability.

Section 7 amends PPB Rule § 3-02(e)(1)(ii)(B)(f) to provide the option, granted to agencies by A7685, to include a link to access the livestreaming of the opening, reading, and identification of bids in a notice of solicitation.

Section 8 amends PPB Rule § 3-02(k)(1) to give agencies discretion to determine the bid submission format by removing paper requirements.

Section 9 amends PPB Rule § 3-02(l)(1) and (2) to give agencies discretion to determine what format bids are stored in and to require agencies to post a record of submitted bids in compliance

with requirements in GML § 103 and clarifies copies of bids be made available during in-person bid openings.

The PPB's authority to promulgate these rules is found in sections 311, 325, and 1043 of the New York City Charter.

The new material added in the text of the rule is underlined and the deleted material is in [brackets]. "Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

SECTION 1. SUBDIVISION (e) OF SECTION 1-01 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

Electronic Signature. An electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record. An electronic signature is considered to be "attached to or logically associated with an electronic record" if the electronic signature is linked to the record during transmission and storage.

In Ink. [A provision specifying the] The use of a pen [to] shall satisfy all signature and initialing requirements, unless otherwise specified in the provision. [Wherever these Rules provide that an action be taken "in ink," this requirement may be satisfied, if provided for in the solicitation, through the use of electronic signatures.]

§ 2. CHAPTER 1 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED BY ADDING A NEW SECTION 1-05 TO READ AS FOLLOWS:

§1-05 Signature Requirements.

Unless otherwise specified, wherever these Rules require a signature or an initial, such requirement may be satisfied through the use of electronic signatures as defined in 1-01(e). The use of an electronic signature shall have the same validity and effect as the use of a signature signed in ink.

§ 3. PARAGRAPHS (3) AND (4) OF SUBDIVISION (c) OF SECTION 2-07 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK Are AMENDED TO READ AS FOLLOWS:

(3) submission of bids or proposals in the form specified in the solicitation including all required signatures, in ink or by electronic signature, and including all required pricing information;

(4) if bid or proposal price has been materially altered, alterations must be initialed in ink or by electronic signature by the bidder or proposer. If the alteration has not been initialed in ink

or by electronic signature, and can be severed from the other items in the bid or proposal, then that particular item only may be considered non-responsive;

§ 3. SUBPARAGRAPH (i) OF PARAGRAPH (2) OF SUBDIVISION (b) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(i) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids; requirements for the electronic submission of bids, if any; time, date, and location of any pre-bid conferences (and a statement whether such conferences are mandatory); and the [address] location where bids are to be [delivered] submitted;

§ 5. PARAGRAPH (1) OF SUBDIVISION (d) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK ARE AMENDED TO READ AS FOLLOWS:

(1) Bid Form and Content. The IFB [shall] will provide a form on which the bidder shall insert the bid price, or other information requested, if any, pursuant to 3-02 (o)(1), and shall sign and submit along with all other necessary submissions. Bids shall be typewritten or written legibly in ink. Erasures or alterations shall be initialed by the signer in ink or by electronic signature. All bids shall be signed in ink or by electronic signature. The bid invitation will also [shall] require that the bid be submitted in a sealed envelope, addressed as required in the bid documents[, on or before the time and at the place designated in the bid documents. If so provided in the solicitation, sealed bids may be submitted electronically]. Where award will be made to the bidder whose bid represents the best value to the City, the IFB may also provide that other information requested, if any, may be submitted up to thirty (30) days from the bid opening by all bidders whose bids are to be considered pursuant to 3-02(o)(1)(iii).

§ 6. SUBPARAGRAPH (F) OF SUBSECTION (i) OF PARAGRAPH (1) OF SUBDIVISION (e) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(F) the date, time, and location and, if applicable, a link to access the livestreaming of the opening, reading, and identification of bids on a publicly accessible website, for the receipt and opening of bids;

§ 7. Clause ((f)) OF ITEM (B) OF SUBPARAGRAPH (ii) OF PARAGRAPH (1) OF SUBDIVISION (e) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

((f)) date and time by which, and the [place] location where, bids shall be submitted and shall be publicly opened and if applicable, a link to access the livestreaming of the opening, reading, and identification of bids on a publicly accessible website; and

§ 8. PARAGRAPH (1) OF SUBDIVISION (k) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(1) Policy. Any bid received at the [place] location designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the [place] location designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Late bids and modifications shall not be opened until after registration of the contract.

§ 9. PARAGRAPHS (1) AND (2) OF SUBDIVISION (I) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK ARE AMENDED TO READ AS FOLLOWS:

(1) Receipt. Upon its receipt, each bid and modification shall be time and date-stamped, but not opened, and stored in a secure [place] location until the time and date set for bid opening. Before bid opening the agency may not disclose the identity of any bidder.

(2) Opening and Recording. Bids and modifications [shall] will be opened publicly, at the time, date, and [place] location designated in the IFB. The name of each bidder, the bid price, and such other information as is deemed appropriate [shall] will be read aloud or otherwise made available. These requirements may be met through access to a computer terminal at the location where bids are to be opened, provided that paper documents are available upon request at the time of in-person bid opening. This information also [shall] will be recorded at the time of bid opening. The bids [shall] will be tabulated or a bid abstract prepared and made available for public inspection. The opened bids [shall] will be available for public inspection [at a reasonable time after] within five days of bid opening but in any case before vendor selection except to the extent the bidder designates trade secrets or other proprietary data to be confidential. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Prices, makes, and model or catalog numbers of the items offered, deliveries, and terms of payment [shall] will be publicly available at a reasonable time after bid opening but in any event before vendor selection regardless of any designation to the contrary at the time of bid opening. For bids on construction contracts submitted in accordance with Section 3-02 (b)(xx)(J) of these Rules, the sealed list of subcontractors submitted with the low bid [shall] will be opened after such low bid has been announced and the names of the subcontractors shall be announced. The sealed lists of subcontractors submitted by all other bidders pursuant to Section 3-02 (b)(xx)(2)(J) of these Rules [shall] will be returned to such bidders unopened after the contract award.