

# Know Your Responsibilities and Rights as a Vendor with the City of New York

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The Mayor's Office of Contract Services

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# The Mayor's Office of Contract Services (MOCS)

- Oversee the procurement process for the mayoral agencies as established by the PPB rules\*
  - Enroll vendors and maintain lists for use by city agencies
  - Review and approve certain procurement actions
  - Ensure vendor responsibility and compliance

\*Mayoral agencies do not include NYCHA, DOE, SCA, HHC, Public Libraries, EDC, PA of NY/NJ, DASNY

# How to Do Business with New York City

- The Vendor Enrollment Center
- Procurement Process
- Enrolling onto Bidders Lists
- Receiving Notices for Solicitations and the City Record
- What is VENDEX and what do I have to disclose?



# Procurement Process

## Phases in the Procurement Process

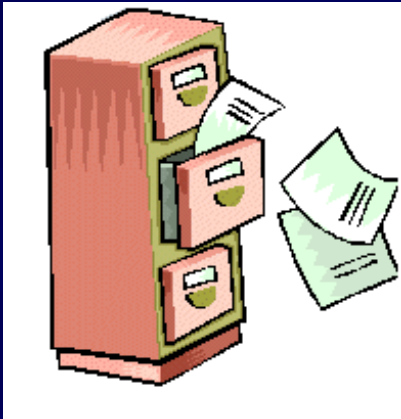
- **Pre-Solicitation - procurement planning and development**
- **Solicitation - notice is publicly released**
- **Evaluation - Agency evaluates responses to solicitation**
- **Award - recommended vendor is reviewed for responsibility, and contract is reviewed by oversight agencies.**
- **Registration - Comptroller's Office has 30 days to register the contract.**

# The Vendor Enrollment Center

- Vendors can win contracts without enrolling, but VEC ensures that you will receive notices of solicitation.
- VEC maintains the Centralized Bidders Lists.
- Getting on the Bidders Lists is a key step in learning about upcoming City contracts.
- Call (212) 857-1680 to request an application or enroll online at <http://www.nyc.gov/html/mocs/html/business/bidderform.shtml>.
- Match your business to industry categories (“commodity codes”).
  - Enroll in codes for the specific services or goods you can potentially supply to NYC. Do not over-enroll.
  - Once application is complete, you will receive a 10-digit vendor number, and you are ready to respond to solicitations.

# Receiving Notices and Solicitations

- **Once enrolled, you should contact agencies to market your interest and demonstrate your capacity as a supplier.**
- **If you receive a solicitation, it is important to respond to it – in order to protect your status as a vendor in good standing for that bidders list.**
  - If you choose not to submit a bid or proposal, but are interested in receiving notices in the future, just return the form indicating that you decline to submit a bid or proposal.
- **It is important to keep your contact information up to date with VEC.**



## *The City Record*

- Vendors may also review new solicitations in *The City Record*, the official journal of New York City government
  - **Includes procurement solicitations for all agencies**
- Available in print or online  
<http://www.nyc.gov/nycvendoronline/home.html>
- Register on line to receive bid notifications by e-mail

# Procurement Methods

Description and Examples

# Procurement Under \$100,000

- *In FY 2009: micropurchases accounted for \$54 million and small purchases totaled more than \$120 million of the money spent by the City to procure supplies, services and construction.*

## **Micropurchase**

- Method of procurement used to buy goods, services or construction valued at up to \$5,000 quickly: agencies may turn to any available vendor from which they may obtain a fair price without formal competition. Agencies are encouraged to use the certified M/WBE list maintained by SBS.

## **Small purchase**

- Method of procurement used for buying goods, services and construction valued at more than \$5,000, up to and including \$100,000. It is a fast-track competitive process where the agency draws a random sample of bidders (at least five) from the citywide bidders' list for the type of services or goods needed. In accordance with Executive Order 71, the system then automatically includes an equal number of certified M/WBEs, and the solicitation is sent to all ten firms.

# Procurements Over \$100,000

**Most common procurement** (competitive) types for items over \$100,000 for new solicitations:

## **Competitive Sealed Bid (CSB)**

- Under this procurement method (PPB rule §3-02), agencies incorporate specifications for the goods, construction or services they need into solicitations, with vendors responding, on a sealed basis, by submitting bids (i.e., prices for the specified items of work). The agency selects the lowest-priced **responsive** and **responsible** vendor.

## **Competitive Sealed Proposals (aka RFP)**

- Under this procurement method (PPB rule §3-03), agencies develop solicitations that detail the expertise, experience and programmatic approach desired, with vendors responding, on a sealed basis, by submitting technical and price proposals. This method of procurement is used when an agency must balance the need for a fair price with consideration of other factors, such as quality of service. It is typically used for human (i.e., client-based) services, professional services and architecture/engineering services.

## **Negotiated Acquisition (PPB rule §3-04)**

- Method of procurement used when only a small number of vendors are available to provide the goods or services needed when there is limited time available or when full competition is otherwise not feasible. Agencies may use this method for a competitive negotiation, choosing from among multiple available providers after a public notice, or, in limited circumstances, to negotiate directly with specifically pre-identified providers.

# Submitting a Responsive Bid or Proposal (PPB §2-07)

- **Proposal complies with all material terms and conditions of the RFP and all material requirements of the specifications.**
- If found non-responsive, ACCO required to notify the proposer within 2 business days after the determination is made.
- Vendor has 5 days from receipt to file an appeal with the agency head (usually Commissioner or General Counsel), whose decision is final.

# Evaluation/Vetting Process

- Goal: To select responsible vendor(s) whose proposals are determined to be the most advantageous to the City.
- For Bids: Lowest Responsive, Responsible bidder
- For RFP's Highest-rated responsive, responsible proposer

# Evaluation/Vetting Process

- Fairness to competitors and avoidance of favoritism
- Ensure selection based solely on specifications and terms of the bid or factors stated in the RFP
- Review vendor responsibility
- Allow NYC to obtain high quality goods/services

# When City Agencies Use RFPs...

The selection process evaluates the technical merit of potential contractors based on their proposal:

- Experience
- Expertise
- Programmatic approach
- Capacity
- Work product quality



# When City Agencies Use RFPs...

- Price is a factor, but not necessarily determinative
- Timetable is longer—agencies plan a year in advance, or more, of contract start date
- PPB allows for discussions/negotiations to arrive at contract terms (flexibility)

# Be Prepared for a New York City Contract

- Be prepared to demonstrate that you have the necessary resources and experience to perform successfully (**bonding, staffing, apprenticeship program**).
- Be prepared to publicly and truthfully disclose management and ownership, including key managers and officers (**Doing Business Database**).
- Be prepared to publicly and truthfully disclose integrity related issues (violations, investigations, indictments), potential conflicts of interest, and previous performance issues (**VENDEX**).
- Be current on your obligations, including paying corporate real property, payroll taxes, and social security contributions, as well as local assessments.
- Be prepared to pay prevailing and living wage rates when legally required to do so.
- Be prepared to completely and truthfully answer all questions asked on the VENDEX Questionnaire, which will be subject to rigorous examination by the agency making the responsibility finding.
- Be prepared to **READ YOUR CONTRACT!**

# VENDEX

## Vendors must complete VENDEX Questionnaires for:

- Contracts or subcontracts valued at \$100,000 or more
- Sole source contracts valued at \$10,000 or more
- Cumulative business with the City in the preceding 12 months totaling \$100,000 or more
- All franchises and all concessions which singly, or in combination with other City contracts are valued at \$100,000

## VENDEX Questionnaires (Types and Duration):

- Valid for three (3) years from the date of signature
- Vendor must update questionnaires with each award within the 3 year period by either submitting a Certification of No Change or Changed Questionnaires
- Completed or Changed VENDEX Questionnaires should be mailed or hand-delivered to MOCS, at 253 Broadway, 9th Fl., New York, NY 10007. Certifications of No Change should be delivered to the Agency that is awarding the contract

## Always err on the side of full disclosure.

Non-disclosure of relevant material may lead to a finding of non-responsibility.

# Responsiveness vs. Responsibility

**The ACCO shall make a determination of responsiveness and responsibility prior to the award of each City contract.**

A **Responsive** bid or proposal complies with all material terms and conditions of the solicitation and all material requirements of the specifications. [PPB Rules §2-07(a)]

A **Responsible** vendor has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars.  
[PPB Rules §2-08(b)]

# Responsiveness

## The responsiveness of a bid or proposal is determined by:

- Submission at the specified location by the due date and time.
  - If it is in the best interests of the City the ACCO may accept late proposals for up to 3 hours. [PPB Rules §3-03(f)(5)]
- Compliance with all material requirements of the specifications.
- Compliance with all material terms and conditions of the solicitation.
- Submission in the form specified including required signatures and all pricing information.
- Changes initialed as required.
- Submission of required disclosure statements, including Doing Business Data Form.
- Submission of bid, performance, or payment security in the form of one-time bond, a bank certified check or money order, or a city bond, if required by the solicitation.
- Attendance at any mandatory pre-bid or pre-proposal conference or site visits

**Bids or proposals that fail to conform will be rejected** [PPB Rules §2-07(b)]

# Responsibility

**A prospective vendor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors. Factors affecting a vendor's responsibility include:**

- financial resources
- technical qualifications
- experience
- a satisfactory record of performance business integrity and
- where the contract includes provisions for reimbursement of contractor costs, the existence of accounting and auditing procedures adequate to control property, funds or other assets.

The Agency reviews and considers the following non-exclusive list of sources for responsibility information and then issues a determination for the particular contract at issue:

- VENDEX data (including cautionary information)
- Performance evaluations\*
- Information supplied by the bidder or proposer
- Any other information relevant to the contract award

**A prospective contractor that has performed unsatisfactorily is presumed to be non-responsible**

- **Caveat:** This is true UNLESS the ACCO determines that circumstances were beyond the

**Note: See PPB Rules §2-08 (b) and §2-08 (c) (2)**

# Charities Registration



Estates, Powers and Trusts Law (EPTL)

- Charitable Organizations incorporated, formed and/or that conduct activity In New York

Executive Law, Article 7-A (Article 7-A)

- Organizations that solicit charitable contributions in New York

“Dual Registrants”

- Organizations that must register and file under both the EPTL and Article 7-A

**Note:** There are a few exceptions based on an organization’s registration type and when in doubt, this information can be obtained at our office or the Office of the Attorney General.

# Determination of Non-Responsibility

## Important information about determinations of non-responsibility:

- Failure to provide information requested by the ACCO may be grounds for a determination of non-responsibility.
- The City's policy is to notify the bidder or proposer of unfavorable information and provide them an opportunity to submit additional information or explanation before a determination of non-responsibility is made by the agency.
- If the bidder/proposer appeals the ACCO's determination of non-responsibility, the award of the contract is postponed UNLESS the ACCO determines that a delay in award will harm substantial city interests and informs the bidder/proposer of this determination in writing.
- **A determination of non-responsibility is immediately entered into the VENDEX database as cautionary information.**

A vendor should directly address the basis in its appeal of a non-responsibility determination. Copies of supporting documents should be included with the appeal to effectively address the charges. If you think additional information is relevant you may include it.

- *Many vendors fail to make a robust appeal.*

Note: See PPB Rules §2-08 (b)(3), §2-08 (g)(2), §2-08 (h)(3) and §2-08 (l)

# Vendor Protest

- Vendors may protest procurement actions by sending a letter to the Agency Head which states the facts upon which the vendor is protesting and include supporting documentation:
  - Within 10 days of knowledge, no later than 10 days after publication of award.
  - Send copies to the Comptroller and MOCS

# Dispute Resolution During Contract

- PPB provides for a dispute resolution process if conflict arises during performance of the contract
  - Limited to terms of the contract, not equity
  - For Construction, dispute resolution is limited to:
    - the scope of work;
    - the interpretation of contract documents;
    - the amount to be paid for extra work or disputed work;
    - the conformity of the vendor's work with the contract; and
    - the acceptability of vendor's work
- PPB applies to both prime contractors and subcontractors
  - Prime Contractor must pursue the claims on behalf of the subcontractor
- Work must continue on the contract while claim is pending

# OVERVIEW OF DISPUTE RESOLUTION PROCESS

## STEP 1

Agency makes a final written Determination

## STEP 2

Vendor appeals to Agency Head and Agency Head makes a written determination

## STEP 3

Vendor appeals to Comptroller and Comptroller negotiates or adjusts claim

## STEP 4

Vendor appeals to CDRB and CDRB makes a written determination

# Contact Information & Web Sites

- To contact MOCS or its VENDEX unit, call 212-788-0010 or visit: <http://www.nyc.gov/html/moc/home.html>
- To download VENDEX questionnaires and guides, visit: <http://www.nyc.gov/html/selltonyc/html/tocvendex.html>.
- To contact VEC call 212-857-1680 or visit: [http://www.nyc.gov/html/selltonyc/html/new\\_vendors.html](http://www.nyc.gov/html/selltonyc/html/new_vendors.html)
- To review applicable PPB regulations visit: <http://www.nyc.gov/html/moc/ppb/html/home/home.shtml>
- To locate potential NYC-certified M/WBE subcontractors and suppliers, visit: <http://www.nyc.gov/buycertified>