

CHAPTER 1
GENERAL PROVISIONS

Section 1-01 **USE OF LANGUAGE IN THESE RULES.**

(a) Singular-Plural and Gender Rules. In these Rules, words in the singular number include the plural and those in the plural include the singular. Words of a particular gender include any gender and the neuter. When the sense so indicates, words of the neuter gender refer to any gender.

(b) Titles. The titles to chapters, sections, subdivisions, and paragraphs, or other titles contained in these Rules, are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of the substantive provision to which the title applies unless the context so requires.

(c) Listing(s) Not Indicative of Order of Preference. Unless otherwise stated, a listing of factors, criteria, or subjects in these Rules does not constitute an order of preference.

(d) Meanings. The words defined in this section shall have the meanings set forth below whenever they appear in these Rules unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular provision.

(e) Definitions.

Acceptable Brands List. An acceptable brands list is a list of manufacturer's name(s), brand name(s), or model and catalogue numbers, based on a written specification. It is arrived at by a systematic and formal process that includes public notice and certain tests or other criterion for comparing or examining and approving products for inclusion on the list.

Acceptance. 1) Acknowledgment of an offer. 2) Acknowledgment that a delivery meets contract requirements.

ACCO. An acronym that stands for Agency Chief Contracting Officer. Position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate agency staff in conjunction with the CCPO.

Agency Contract File. Those file(s) that contain information pertaining to the solicitation, award, and management of each contract.

Agency Head. A term referring to heads of city, county, borough, or other office, administration, department, division, bureau, board, or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.

Alternative Bid/Proposal. Response to a solicitation offering an alternative to the requirements of specifications set forth in the solicitation.

Alternative Procurement Method. Any method of procurement other than competitive sealed bid.

Appeal. A formal request to redress an administrative decision.

Best and Final Offers. The revised and corrected final proposals submitted by suppliers after discussions and negotiations have been held by the procuring agency.

Bid. An offer, as a price, whether for payment or acceptance. A tender given specifically to a prospective purchaser upon request, usually in competition with other bidders.

Bidder. Any supplier submitting a competitive bid in response to a solicitation.

Bidders/Proposers List. A list maintained for the purposes of setting out the names and addresses of suppliers from whom bids and proposals can be solicited.

Brand Name Only Specification. A specification that cites the brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

Brand Name or Equal Specification. A specification that cites brand name, model number, etc., as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

Business. Any corporation, firm, company, organization, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity including not-for-profit organizations.

Buy-Against. The process by which an agency obtains goods and services to fulfill its requirements after a supplier defaults or fails to fulfill its contract responsibilities.

CCPO. An acronym that stands for City Chief Procurement Officer. Position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

CDRB. An acronym that stands for Contract Dispute Resolution Board.

Change Order. Any alteration, change, amendment, or modification to any contract or agreement approved as required by law or rule.

Charter. The New York City Charter.

City. City of New York.

Client Services. Programs contracted for by the City of New York on behalf of third-party clients, including programs to provide social services, health or medical services, housing and shelter assistance services, legal services, employment assistance services, and vocational, educational, or recreational programs. Client services are sometimes referred to as "human services" and government agencies whose primary missions involve the award and administration of such contracts, or provision of the same or similar services by agency employees, are sometimes referred to as "human services agencies." Examples of client services include, but are not limited to, day care, foster care, mental health treatment, operation of senior centers, home care, employment training, homeless assistance, preventive services, health maintenance organizations, youth services, and the like.

Competitive Sealed Bidding. The source selection method in which sealed bids are publicly solicited and opened and a contract is awarded to the lowest responsive, responsible bidder.

Competitive Sealed Proposals. The source selection method in which a solicitation is made to potential suppliers, and between receipt of proposals and award, discussions with suppliers may take place to resolve uncertainties in the proposal, advise suppliers of deficiencies in meeting the agency's requirements, allow for resulting price changes, etc.

Completion Contracts. Contracts entered into by an agency with a supplier for completion of all or part of the work of a construction contract. Completion contracts shall not be considered new procurements.

Construction. The process of building, reconstructing, rehabilitating, converting, altering, extending, improving, repairing, maintaining, or demolishing City real property or other public improvements.

Construction Management Contract. A form of construction contract that provides that the supplier is to furnish management and supervisory services necessary for the construction of facilities that may also include construction services and the ability to award the underlying construction contracts.

Construction-Related Services. Those services that may reasonably be required in the planning, design, or construction of real property or other public improvements. Such services shall include, but not be limited to, such services as architecture, engineering, construction supervision, construction management, planning, surveys and reports, testing and investigation, and printing and blueprinting.

Contract. A written agreement between the City and a supplier in an amount generally in excess of the small purchase limits that gives rise to obligations that are enforced and recognized by law.

Contracting Officer. Any person duly authorized to enter into and administer contracts and make determinations with respect thereto. The term also includes an authorized representative acting within limits of authority.

Contractor. Any person having a contract with a governmental body.

Conviction. A legal determination of guilt in any United States jurisdiction relative to a criminal offense that constitutes a felony or misdemeanor including a guilty plea or a plea of nolo contendere.

Cost Analysis. The process of examining the reasonableness of a supplier's price by evaluation of the separate cost elements and proposed profit in part on the basis of cost data supplied and certified by the supplier. Cost analysis is used on contract actions (including change orders) where price cannot be determined as fair and reasonable by using price analysis alone.

Day(s). Calendar day unless otherwise specifically stated in the applicable rule.

DBS. An acronym that stands for Department of Business Services.

DCAS. An acronym that stands for Department of Citywide Administrative Services.

DDC. An acronym that stands for Department of Design and Construction.

Debarment. Exclusion for cause of a supplier from consideration for future business for a specified period of time as determined by OATH.

DEFO. An acronym that stands for Division of Economic and Financial Opportunity of the Department of Business Services.

Discussion. The process by which the Contracting Officer enhances understanding of the City's requirements in conjunction with the supplier's proposals and capabilities to arrive at the best price prior to Best and Final Offers in a Competitive Sealed Proposal method of procurement.

DLS. An acronym that stands for Division of Labor Services of the Department of Business Services.

DOI. An acronym that stands for Department of Investigation.

Emergency. An unforeseen danger to life, safety, property, or a necessary service.

Equal Employment Opportunity/EEO. The treatment of all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status in all employment decisions, including but not limited to recruitment, hiring, compensation, fringe benefits, training and apprenticeship,

promotion, upgrading, demotion, downgrading, transfer, lay-off, termination, and all other terms and conditions of employment as required by federal, state, and local laws and executive orders.

Executed. When referring to a contract, the point at which all requirements for effectiveness of the contract have been fulfilled, including all required signatures and approvals, prior to registration by the Comptroller.

FISA. An acronym that stands for Financial Information Services Agency.

FOIL. An acronym that stands for Freedom of Information Law.

Goods. All personal property, including but not limited to equipment, materials, printing, and insurance, excluding land or a permanent interest in land.

Governmental Body. Any department, office, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official for the executive or legislative branches of the government of the City of New York whose operations are paid for out of the City treasury or out of the monies under the control of assessed or collected by the City or the majority of the members of whose board are City officials or are individuals appointed directly or indirectly by City officials.

Grant. A cash transfer made by a government entity to another government entity, a quasi-public entity, a private organization, or an individual, for use by the recipient in accomplishing objectives established by the recipient. A grant is permissible only to accomplish a public purpose authorized by federal, state, or City law. A grant may be conditional, although awarded without other consideration. Federal and state grants are identified specifically by formula or specific allocations in law or in the annual operating budget act, bond authorizations, or other acts of Congress or the state legislature. Grants can be distinguished from procurement contracts, which call for the supplier to produce specific end products or to deliver specific goods or services. While there are requirements under a grant that result in an executed agreement between the grantor and grantee, this document is not a contract for services.

Human Services. See Client Services.

IFB. An acronym that stands for Invitation for Bids.

Improper Conduct. Includes but is not limited to intentional or grossly negligent billing irregularities, submitting false or frivolous or exaggerated claims, the falsification of documents or records, the willful destruction of documents or records the supplier had an obligation to maintain, bribery, use of false deceptive statements to obtain some benefit, causing competition to be restrained or limited, misrepresentation, falsely claiming to be a minority or small business, violations of ethical standards established by the New York City Conflicts of Interest Board or the Procurement Policy Board, and other dishonesty incident to obtaining, prequalifying for, or performing any contract or modification thereof.

Information Technology. Systems or components thereof including, but not limited to, hardware, software, firmware, and telecommunications that integrate and process data; and services including, but not limited to, planning, consulting, project managing, developing requirements definitions, analyzing, designing, programming, testing, training, implementing, as well as conversion capacity management and quality assurance for the purpose of using, creating, maintaining, operating, or repairing computer systems or networks or computer systems or components thereof. For purposes of these Rules, information technology shall also include any goods or services determined by an ACCO to be necessary to repair or replace any systems or components thereof that may fail or malfunction due to a system's inability to recognize or accept the year 2000 date, which shall mean accurately processing date/time data (including, but not limited to, calculating, comparing, sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations.

Inspection. The process of checking material purchased against specifications to insure standards are met.

Inspector. The individual responsible for inspection in accordance with a prescribed inspection procedure.

Intergovernmental Purchase. The issuance of a purchase order or contract to procure goods, services, or construction through the United States General Services Administration, any other federal agency, the New York State Office of General Services, any other state agency or in cooperation with another public agency subject to the rules set forth herein.

Investigative or Confidential Services. Services provided by law enforcement, scientific, and/or legal consultants, or other experts or professionals that are necessary in connection with an official matter within the scope of the acquiring agency's authority and that directly or indirectly relate to a pending or contemplated case, trial, litigation, or confidential or sensitive investigation or negotiation for which such services of the nature and kind envisioned herein are ordinarily used.

Invitation for Bids (IFB). All documents, whether attached or incorporated by reference, utilized in soliciting a bid. Usually used in connection with Competitive Sealed Bidding.

LBE. Locally Based Business Enterprise program established under New York City Local Law 49 for the year 1984 as amended by New York City Local Law 25 for the year 1989 which provides assistance to small, economically-disadvantaged construction firms meeting the stated economic criteria regardless of race or sex.

M/WBE. Minority and Women's Business Enterprise; a business concern authorized to do business in the State, including sole proprietorships, partnerships, and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens who are (a) either minority group members or (b) women, (ii) the ownership interest of such person is real, substantial, and continuing, and (iii) such persons have and exercise the authority to control independently the day-to-day business decisions of the enterprise.

May. Denotes the permissive.

Multi-Step Sealed Bidding. Source selection method involving two competitive steps. In the first step, suppliers submit a technical proposal for furnishing the goods or service described in the solicitation. The solicitation may or may not require submission of a sample as part of the technical proposal. In the second step, the agency evaluates the proposals. If price bids were solicited with the technical proposals, the agency evaluates the bids of those technical proposals deemed acceptable. If price bids were not solicited with technical proposals (or if based on discussions with suppliers, technical proposals are revised), price bids are solicited from those suppliers who submitted acceptable technical proposals. In either case, award shall be made, if at all, to the lowest responsive and responsible bidder.

Negotiation. The deliberation and discussion of the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or business transaction.

Negotiated Acquisition. A method of source selection under which procurements can be made through negotiation due to circumstances and subject to conditions, as specified in these Rules, in which it is not practicable and/or advantageous to the City to make the procurement through competitive sealed bidding or competitive sealed proposals. The use of negotiated acquisition requires CCPO approval.

Non-Commodity Data Processing Equipment, Products, and Services. Includes, but is not limited to, mainframes, and related peripheral equipment such as disk storage, tape storage, and associated controllers, sophisticated switching equipment, integrated systems, operating software, major applications software, and all data processing consultant services, all of which require a high level of planning, expertise, and coordination of a technical and physical nature.

Non-Responsive Bid. A bid that does not conform to the requirements of the Invitation for Bids.

Notice of Award. Process of notifying successful suppliers of an intended contract award.

OATH. An acronym that stands for Office of Administrative Trials and Hearings.

OMB. An acronym that stands for the Office of Management and Budget.

Offer. The act of one person that gives another person the legal power to create a contract to which both of them are parties.

Offeror. A person submitting an offer.

Officer. An individual holding a position of authority either in government or business.

Partner. One of two or more persons heading the same partnership.

Person. Any business, individual, partnership, corporation, union, firm, company, committee, club, other organization, governmental body, or group of individuals.

Phased Design and Construction. A method in which construction is begun when appropriate portions have been designed, but before substantial design of the entire structure has been completed.

PIN. An acronym that stands for Procurement Identification Number.

PPB. An acronym that stands for Procurement Policy Board.

PQL. An acronym that stands for prequalified list.

Prequalification. The screening of potential suppliers in which a purchaser may consider factors such as financial capability, reputation, and management in order to develop a list of prospective suppliers qualified to be sent invitations to bid or requests for proposals.

Prevailing Market Price. Prices commonly paid by the public either through a standard price list or catalogue.

Price Analysis. The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Examples of price analysis techniques that may be appropriate to use to determine whether a proposed price is fair and reasonable include, but are not limited to, comparing proposed prices received in response to a solicitation; comparing current proposed prices to prior proposed prices and contract prices; applying rough yardsticks, i.e., rough order of magnitude (e.g., dollars/lb., price/horsepower), to a proposed price to highlight inconsistencies that would warrant further review; comparing proposed prices with competitive price lists, published market prices of commodities, similar indexes, discounts or rebate arrangements, and comparing proposed prices with cost estimates prepared by City personnel charged with cost estimating.

Procurement. Buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction. It also includes all functions that pertain to the obtaining of any good, service, or construction, including planning, description of requirements, solicitation and selection of sources, preparation and award of contract, and all phases of contract administration, including receipt and acceptance, evaluation of performance, and final payment.

Procurement Identification Number (PIN). A unique identifying number for each solicitation or contract notification, which must be consistently used by an agency each time any action related to the procurement is published, commencing with the first time a publication related to that procurement is advertised. The first three digits of the PIN shall be the agency budget code.

Proposal. An offer made by one person to another as a basis for negotiations for entering into a contract.

Proposal Evaluation Criteria. Factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price, and other important considerations used to evaluate which supplier in a competitive negotiation has made the most advantageous offer.

Proposer. A person submitting a proposal in response to a Request for Proposal.

Protest. A complaint about a governmental action or decision concerning procurement brought by an interested party to the appropriate administrative section with the intention of achieving a remedial result.

Public Notice. Advertisement and announcement of contract actions with the intended purpose of increasing competition; broadening industry participation; assisting small, disadvantaged, and minority- or woman-owned businesses; and monitoring of City procurement activities.

Public Opening. The process of opening and reading bids, conducted at the time and place specified in the Invitation of Bids and/or the advertisement and in the presence of anyone who wishes to attend.

Purchase Description. The words used in a solicitation to describe the goods, services, or construction to be purchased, including any performance, physical, or technical requirements. Unless the context requires otherwise, the terms "purchase description," "purchase specification," and "specification" may be used interchangeably.

Purchase Order. An official document of the City directing the supplier to perform. A purchase order formalizes a purchase transaction with a supplier for purchases generally at or below the small purchase limits unless the purchase order is placed against an existing contract.

Registration. The process through which the Comptroller (1) encumbers funds to insure that monies are available to pay suppliers upon the satisfactory completion of contract work; (2) maintains a registry of City contracts and agreements; (3) presents objections if, in the Comptroller's judgment, there is sufficient reason to believe that there is possible corruption in the letting of the contract or that the proposed contractor is involved in corrupt activity, and (4) tracks City expenditures and revenues associated with those contracts and agreements.

Responsible Bidder or Proposer. A supplier who has the capability in all respects to perform in full the contract requirements, and the business integrity and reliability that will assure good faith performance.

Responsive Bidder or Proposer. A supplier whose bid or proposal conforms to the terms set out by the City in the solicitation.

RFP. An acronym that stands for Request for Proposals. All documents, whether attached or incorporated by reference, used for soliciting competitive proposals.

Rule. As used herein, the statement or communication that prescribes mandatory standards for the procurement of goods, services, and construction.

Sealed Bid. A bid that has been submitted in response to an Invitation for Bids in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids.

Service Contract. A contract that calls for a supplier's time and effort rather than for delivery of goods and construction. The term as defined here does not include employment agreements or collective bargaining agreements.

Services. The furnishing of labor, time, or effort by a supplier. This term shall not include employment agreements or collective bargaining agreements.

Shall. Denotes the imperative.

Single Bid/Proposal. The only bid/proposal received in response to an Invitation for Bids/Request for Proposals.

Small Purchases. Any procurement at or below the small purchase limits.

Sole Source Procurement. An award of a contract for a good, service, or construction to the only source for the required good, service, or construction.

Solicitation. The process of notifying prospective suppliers that a governmental body wishes to receive bids or proposals for furnishing goods, services, or construction. The process may consist of public advertising, mailing invitations for bids or requests for proposals, posting notices, telephone or facsimile messages to prospective suppliers, or all of these.

Special Case. A situation in which it is either not practicable or not advantageous to the City to use competitive sealed bidding as defined in Section 312 of the Charter.

Specification. A description of what the purchaser seeks to buy and, subsequently, what a supplier must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of a good, service, or construction. It may include a description of any requirements for inspecting, testing, or preparing a good, service, or construction item for delivery; also Purchase Description.

State. State of New York.

Supplier. An actual or potential contractor.

Suspension. An agency decision to exclude a supplier from consideration for award of contracts for a period not exceeding three months plus any extensions pending a debarment determination by OATH.

Time. Unless otherwise stated in these Rules, time shall be designated in calendar days.

Unsolicited Proposal. A written proposal submitted to an agency on the initiative of the proposer for the purpose of obtaining a contract with the City and which is not in response to a formal or informal request. Advertising material, commercial product offers, or technical correspondence are not considered unsolicited proposals.

User. An individual or entity for which goods, services, or construction are to be purchased.

VENDEX. A computerized citywide system providing comprehensive contract management information.

WBE. (See M/WBE).

Year. Unless otherwise indicated in these Rules, the word "year" as it relates to terms of contracts shall mean the City's fiscal year.

CHAPTER 3

METHODS OF SOURCE SELECTION

Section 3-01 POLICY.

(a) Methods of Source Selection. Unless otherwise authorized by law, all City procurements shall be made by one of the methods authorized by these Rules.

(b) Preference for Competitive Sealed Bidding. Except as otherwise provided in these Rules, contracts shall be awarded by competitive sealed bidding. In the case of construction, where appropriate in the judgment of the ACCO, and in accordance with these Rules, competitive sealed bidding from prequalified suppliers or any other appropriate procurement method may be used.

(c) Preference for Competitive Sealed Proposals in Certain Contracts. Procurement by competitive sealed proposals is the preferred method for awarding contracts for non-commodity data processing equipment and for information technology, non-commodity data processing, architectural, engineering, client, legal, accounting, financial, training, educational, cultural, medical, managed care, employee health benefits, scientific, management, research, performing arts, and systems consultation services, and/or other similar services. A "Special Case" determination is not required for such procurements.

(d) "Special Case". Agencies may elect to use one of the methods of source selection listed herein, after making the determination that it is not practicable or not advantageous to the City to use competitive sealed bidding as required by this section.

(1) Methods of Source Selection for which "Special Case" Determination is Required: A "Special Case" determination is required for each case in which one of the following methods of source selection is used:

- (i) Competitive sealed bidding from prequalified suppliers;
- (ii) Competitive sealed proposals (including multi-step process);
- (iii) Competitive sealed proposals from prequalified suppliers;
- (iv) Negotiated acquisition;
- (v) Sole source procurement;
- (vi) Demonstration project for innovative products, approaches, or technologies;
- (vii) Innovative procurement method; or

(viii) Government-to-government purchase.

(2) "Special Case" Circumstances. A special case is a circumstance recognized by these Rules in which it is not practicable or not advantageous to the City to use competitive sealed bidding for one of the following reasons:

(i) specifications cannot be made sufficiently definite and certain to permit selection based on bid price or evaluated bid price alone;

(ii) judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of price, quality, and other factors;

(iii) there is only one available source, as set forth in these Rules;

(iv) testing, experimentation, or evaluation is required to determine the feasibility and application of an innovative product, approach, or technology not currently used by the City;

(v) the need for advance screening of qualifications is paramount and prequalification is appropriate for one of the reasons set forth in these Rules;

(vi) circumstances justifying the use of negotiated acquisition as set forth in these Rules; or

(vii) to test and evaluate the feasibility and application of innovative procurement methods not currently used by the City or provided for in these Rules.

(3) Source Selection in a Special Case. Upon determining that there is a special case which warrants procurement by other than competitive sealed bidding, the Contracting Officer shall select the most competitive alternate method of source selection among those listed in Section 3-01 above which is practicable and advantageous to the City.

(4) Special Case Determination. The determination that there is a special case, and the reasons that the method of source selection is the most competitive that is appropriate under the circumstances, shall be made in writing in advance of issuing solicitations, as part of any presolicitation review required by these Rules, and shall be approved by the ACCO. Procurements by negotiated acquisition shall require the written approval of the CCPO prior to initiating negotiations.

Section 3-02

COMPETITIVE SEALED BIDDING.

(a) Application. This section shall apply to all procurements made by competitive sealed bidding including multi-step sealed bidding.

(b) Invitation for Bids.

(1) Use. The IFB is used to initiate a competitive sealed bid procurement.

(2) Content. The Invitation for Bids shall include the following:

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

(ii) the purchase description, delivery and performance schedule, and any special instructions necessary;

(iii) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable;

(iv) a statement that award shall be made to the lowest responsive and responsible bidder;

(v) if not included in the bid documents, a notice of where suppliers may obtain a copy of all contractual terms and conditions or other project-related material;

(vi) a provision indicating bidder liability for bidder failure to execute contract and to provide any required security within ten days after notice of award pursuant to Section 313(d) of the Charter;

(vii) a provision that bidders should give specific attention to the identification of those portions of their bids that they deem to be confidential proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the bid;

(viii) a notice of the bidder's rights to appeal certain decisions;

(ix) a notice describing the City's prompt payment policy, including an explanation of the requirements for invoicing;

- (x) a notice that prices are irrevocable until contract award, unless the bid is withdrawn, and that bids may be withdrawn only after the expiration of forty-five days from bid opening and only in writing received by the agency and in advance of award;
- (xi) a requirement for acknowledgment of amendments;
- (xii) a provision concerning the submission and consideration of alternate bids, if applicable;
- (xiii) a notice that contract award is subject to provisions of the MacBride Principles Law;
- (xiv) a notice that contract award is subject to applicable provisions of federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity;
- (xv) where applicable, a notice that contract award is subject to completion of a VENDEX questionnaire and review of that information by the Department of Investigation;
- (xvi) where applicable all information required pursuant to Section 312(a) of the Charter;
- (xvii) the name, address, and telephone number of a contact person to whom questions and correspondence relating to the bid solicitation can be addressed;
- (xviii) the following statement:

The New York City Comptroller is charged with the audit of contracts in New York City. Any supplier who believes that there has been unfairness, favoritism, or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; telephone number (212) 669-3000;

and

- (xix) where applicable for construction contracts, the following shall be additionally included:
 - (A) a specific description and exact location of the construction and the date and time for the bidder to visit the job site when the solicitation requires a mandatory pre-bid visit to and examination of the job site;

(B) a reference to all applicable documents which will subsequently become a part of the contract, such as the specifications and the terms and conditions approved by Corporation Counsel;

(C) a statement establishing minimum insurance requirements which the City will require of the bidder if successful and conveying to the bidder any insurance coverage which the City will carry that will afford the contractor insurance coverage;

(D) a statement that the bidder will be required to meet all licensing or permit requirements required to perform the construction;

(E) a statement of instructions relative to the return of bid documents if the bidder elects not to submit a bid thereunder and notification to the City of the bidder declining to bid;

(F) a statement that all bid documents must be returned to the City upon request;

(G) the form in which the bid is to be submitted (either specified in the invitation for bids or referenced as part of the specifications or attached forms);

(H) a requirement that for projects on which more than one prime contractor will be involved, all bidders examine the invitation for bid packages for all other parts of the project;

(I) a statement that the bidder will be required to comply with Section 220/230 of the New York State Labor Law and with all other federal, State, and local labor laws and regulations, including but not limited to providing on-the-job training opportunities and payment of prevailing wages; and

(J) a notice that contract award is subject to the provisions of Section 6-108.1 of the New York City Administrative Code relating to the LBE program and its implementing rules.

(c) Bidding Time. Bidding time is the period of time between the date of public advertisement of the IFB and the time and date set for receipt of bids. The bidding time shall be not less than fifteen days before the bid opening date.

(d) Bidder Submissions.

(1) Bid Form and Content. The IFB shall provide a form on which the bidder shall insert the bid price, 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. All bids shall be signed in ink. The bid invitation 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.

(2) Bid Samples and Descriptive Literature. The IFB shall state that bid samples and descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature that are submitted at the bidder's risk will not be examined or tested and will not be deemed to vary any of the provisions of the IFB.

(e) Public Notice.

(1) Notice of Solicitation.

(i) Distribution. IFBs or notices of their availability shall be mailed or otherwise furnished at least fifteen days in advance of the due date for the bids to a sufficient number of suppliers including all suppliers on the bidders list for the purpose of securing competition. Where the notice does not include all IFB documents, an additional five days shall be allowed. Notices of availability shall indicate, at minimum:

(A) the name of the agency and, if appropriate, the specific division or bureau soliciting the bids;

(B) title and brief description of the goods, services, or construction required;

(C) specific information about how, when, and where the IFB is available;

(D) the required fee or deposit amount, if any, for obtaining the IFB;

(E) the time, date, and location of any pre-bid conference or site visit, if any, and if attendance is mandatory;

(F) the date, time, and location for the receipt and opening of bids; and

(G) if applicable, the name and phone number of the agency contact person.

(ii) Publication. This subparagraph shall apply to competitive sealed bids above the small purchase limits except that it shall not apply where suppliers will be solicited from a PQL.

(A) Frequency. Notice of solicitation shall be published at least once in the City Record not less than fifteen days before the bid opening date with the exception of accelerated procurements, which shall appear not less than three business days before the bid opening date.

(B) Content. Such notice shall include:

((a)) agency name;

((b)) PIN;

((c)) title and/or brief description of the goods, services, or construction to be procured;

((d)) estimated quantity, if any;

((e)) how the solicitation documents may be obtained;

((f)) date and time by which, and the place where, bids shall be submitted and shall be publicly opened; and

((g)) required supplier qualifications or eligibility requirements, if any.

(2) Notice of Supplier Selection.

(i) Frequency. Notice of supplier selection exceeding the small purchase limits shall be published once in the City Record within fifteen days after registration of the contract.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction procured;

- (D) name and address of the supplier;
- (E) dollar value of the contract; and
- (F) procurement method by which the contract was let.

(3) Public Availability. A copy of the IFB shall be available for public inspection at a location in the agency offices designated by the ACCO.

(f) Bidder's Lists.

(1) Lists of suppliers interested in being solicited for bids shall be compiled and maintained by the procuring agency. In addition, the CCPO may authorize one or more agencies to maintain citywide bidders lists. Bidders lists shall be classified by standard categories of goods, services, and construction that are sufficiently detailed to provide meaningful distinctions among categories. Bidders lists shall include the names, addresses, EIN, and telephone numbers of the suppliers, and, if known, minority and women supplier status as certified by DBS. Each agency shall make reasonable efforts to ensure inclusion of minority and women's business enterprises on its bidders lists.

(2) The CCPO shall cause to be continuously published in the City Record notice of the availability of applications for suppliers to be added to agency bidder lists for goods, services, and construction regularly procured by the City. Every effort shall be made to publish notice in a manner that will encourage applications from minority and women's business enterprises.

(3) Application by suppliers for placement on an agency's bidder list shall be continuously available on request from the supplier.

(4) Businesses that fail to respond to solicitations or notices of availability of procurement opportunities on three consecutive invitations within one standard category may be removed by the ACCO from the applicable bidder's list after notice to the supplier. Application for reinstatement shall be the responsibility of the supplier. A "No Bid" statement on a returned bid shall be considered a response.

(5) Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate that the business is responsible in respect to a particular procurement or otherwise is capable of successfully performing a City contract.

(g) Prequalified Supplier Lists. In accordance with these Rules, bids may be solicited from a list of prequalified suppliers.

(h) Pre-Bid or Pre-Solicitation Conferences. Pre-bid or pre-solicitation conferences may be conducted by the ACCO to explain the procurement requirements. Written notice of any conference shall be provided to all prospective suppliers. A pre-bid conference should be held long enough after the IFB has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the IFB unless a change is made by written amendment as provided in this section. A summary of the conference shall be maintained in the agency contract file. If a transcript is made it shall be public record. A record of attendance shall be kept of all conferences.

(i) Amendments to IFBs.

(1) Authority. The ACCO shall authorize the issuance of any amendment.

(2) Form. Each amendment to an IFB shall be identified as such, shall be set forth in writing, and shall require that the bidder acknowledge receipt of all amendments issued as a condition for consideration of its bid. The amendment shall reference the portion of the IFB it amends.

(3) Distribution. Amendments shall be sent to all prospective suppliers known to have received an IFB.

(4) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective suppliers to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible, and stated in the amendment or, if necessary, by electronic mail, facsimile, or telephone and confirmed in the amendment.

(j) Pre-Opening Modification or Withdrawal of Bids.

(1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the IFB before the time and date set for bid opening.

(2) Disposition of Bid Security. If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

(3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the agency contract file.

(k) Late Bids, Late Withdrawals, and Late Modifications.

(1) Policy. Any bid received at the place 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 designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered.

(2) Exception. A late modification of a successful bid that makes its terms more favorable to the City shall be considered at any time it is received and may be accepted upon the written approval of the ACCO.

(3) Record. A record shall be made of each request for late bid acceptance, modification, or withdrawal which shall be retained in the agency contract file. Late bids and modifications shall not be opened until after registration of the contract.

(l) Receipt, Opening, and Recording of Bids.

(1) Receipt. Upon its receipt, each bid and modification shall be time- and date-stamped, but not opened, and stored in a secure place 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 be opened publicly, at the time, date, and place designated in the IFB. The name of each bidder, the bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available. This information also shall be recorded at the time of bid opening. The bids shall be tabulated or a bid abstract prepared and made available for public inspection. The opened bids shall be available for public inspection at a reasonable time after bid opening but in any case before supplier 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 be publicly available at a reasonable time after bid opening but in any event before supplier selection regardless of any designation to the contrary at the time of bid opening.

(3) Confidential Data. The ACCO shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by Agency Counsel. Any decision not to honor a request for confidentiality shall be communicated in writing to the bidder making the submission.

(m) Mistakes in Bids.

(1) General. Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible,

but only to the extent that it is not contrary to the interest of the City or the fair treatment of other bidders.

(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 3-02(j) of these Rules.

(3) Confirmation of Bid. When the Contracting Officer knows or has reason to conclude after bids have been publicly opened that a mistake has been made, such officer shall request from the bidder written verification of the bid. If the bidder alleges mistake, the bid may be corrected or withdrawn upon written approval of the ACCO if the following conditions are met:

(i) Minor Informalities. Minor informalities are matters of form, rather than substance, evident from the bid document or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City. Examples include the failure of a bidder to:

(A) return the number of signed bids required by the IFB, or

(B) acknowledge receipt of an amendment to the IFB, but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms, or the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(ii) Mistakes Where Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(iii) Mistakes Where Intended Correct Bid is Not Evident. Mistakes may not be corrected after bid opening. A bidder may be permitted to withdraw a low bid where a unilateral error or mistake has been discovered in the bid and the Contracting Officer makes the following determination, which shall be approved by the ACCO:

(A) the mistake was known or made known to the agency prior to supplier selection or within three days after the opening of the bid, whichever period is shorter;

(B) the price bid was based on an error of such magnitude that enforcement would be unconscionable;

(C) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;

(D) the error in bid is actually due to an unintentional and substantial arithmetic error or unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and

(E) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.

Upon the approval of the ACCO, the bid may be withdrawn, and the bid bond or other security returned to the bidder. The contract shall either be awarded to the next lowest bidder or resolicited pursuant to these Rules. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

(4) Mistakes Discovered After Supplier Selection. Mistakes shall not be corrected after supplier selection except where the ACCO, subject to the approval of the CCPO, makes a determination that it would be unconscionable not to allow the mistake to be corrected.

(5) Determinations Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the ACCO shall prepare a determination showing that the relief was granted or denied in accordance with these Rules.

(n) Withdrawal of Bids. Except as provided for in Section 3-02(j) a bidder may not withdraw its bid before the expiration of forty-five days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award.

(o) Bid Evaluation and Supplier Selection.

(1) General. The responsible bidder whose bid meets the requirements and objectively measurable evaluation criteria set forth in the IFB, and whose bid price is the lowest responsive and responsible bid price or, if the IFB has so stated, the lowest responsive and responsible evaluated bid price, shall be selected for the contract. A bid shall not be evaluated for any requirement or criterion that is not disclosed in the IFB.

(2) Negotiation with the Apparent Lowest Responsive and Responsible Bidder. Upon determination of the apparent lowest responsive and responsible bidder and prior to award, the Contracting Officer may elect to open negotiations with the selected supplier in an effort to improve the bid to the City with respect to the price only. In the event the apparent lowest responsive and responsible bidder declines to negotiate, the Contracting Officer may elect to either award the contract to the apparent lowest responsive and responsible bidder or may, upon written approval by the ACCO, reject all bids in accordance with this section. The result of negotiations, if any, shall be documented in the Recommendation for Award.

(3) Award. Upon the determination of the lowest responsive and responsible bidder, a written Recommendation for Award shall be prepared by the Contracting Officer and submitted to the ACCO for written approval. After approval has been obtained, the contract shall be awarded to that bidder. The Recommendation for Award shall be part of the permanent contract file.

(p) Low Tie Bids.

(1) Definition. Low Tie Bids are low responsive bids from responsible bidders that are identical in price, meeting all the requirements and criteria set forth in the IFB.

(2) Supplier Selection. In the case of low tie bids, the ACCO shall break the tie in the following order of priority.

(i) Select a certified New York City small, minority or woman-owned business entity bidder;

(ii) Select a New York City bidder;

(iii) Select a certified New York State small, minority or woman-owned business bidder;

(iv) Select a New York State bidder;

(v) Conduct a drawing. Tie bidders shall be invited to witness the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

(3) Record. A written record shall be made of tie bids received, and the method used to break the tie. Copies of the record shall be retained in the agency contract file. The ACCO shall monitor the incidence of low tie bids in a systematic manner.

(q) Single Bid. When a single bid has been received in response to an IFB, a supplier may be selected only after the ACCO has determined that a sufficient number of other potentially responsive suppliers have had a reasonable opportunity to bid; why, as a result of inquiries made by the agency, other suppliers chose not to submit bids; that the bid submitted meets minimum requirements of the IFB; that the price is fair and reasonable, and that resolicitation is not in the best interest of the City. Copies of such determinations shall be made part of the agency contract file.

(r) Alternate Bids. Unless alternate bids are requested in the solicitation, such bids may not be accepted.

(s) Multi-Step Sealed Bidding.

(1) Conditions for Use. Multi-step sealed bidding may be used when it is determined by the ACCO that it is impracticable to prepare specifications to support supplier selection based solely on price.

(2) Evaluation.

(i) Once the technical proposals have been evaluated, price bids from only those suppliers whose technical proposals have been found acceptable shall be considered and evaluated.

(ii) Price bids may be solicited at the same time as technical proposals, in separate sealed envelopes, or after evaluation of technical proposals, only from those whose technical proposals have been found acceptable.

(iii) Price bids shall not be opened until the technical evaluation is complete. Price bids from suppliers whose technical proposals have been found unacceptable shall not be opened until after registration of the contract.

(t) Selection of Other Than Lowest Bidder. If the ACCO determines that the lowest bidder is either not responsible or not responsive, the lowest bidder shall immediately be notified in writing of such determination and the reasons therefor, and the right to appeal such determination, if applicable. A copy of the notification shall be filed with the PPB.

(u) Selection of Other Than or in Addition to the Lowest Responsible Bidder.

(1) Upon application from the ACCO, the Mayor may determine that it is in the best interest of the City to select a supplier other than or in addition to the lowest responsible bidder.

(2) A determination to select a supplier other than or in addition to the lowest responsible bidder shall set forth the reason for the decision.

(3) Notice of Supplier Selection.

(i) Frequency. Notice of supplier selection to other than the lowest responsive and responsible bidder shall be published once in the City Record within fifteen days of registration of the contract.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction procured;

(D) name and address of the supplier;

(E) dollar value of the contract; and

(F) summary of the determination made by the Mayor or CCPO justifying the award to other than the lowest responsive and responsible bidder.

(4) After making a determination to bypass the lowest responsible bidder in accordance with these Rules, the Mayor shall within five days notify the lowest responsible bidder of that determination. The notification shall state the reasons upon which the determination is based.

(v) Rejection of Bids. The ACCO may reject all bids and may elect to resolicit bids in accordance with this section if he determines it is in the City's best interest to do so. A record of such decision and the reasons therefor shall be made a part of the agency contract file.

(w) Resolicitation in cases of failed bids due to defects in the solicitation documents. Under the circumstances set forth in this subdivision, the ACCO may determine that it is appropriate to reject all bids after opening and before supplier selection and to complete the acquisition by a new solicitation for which notice is provided as set forth in this subdivision.

(1) This procedure may be used where at least five responses to the solicitation have been received, and despite efforts to address problems in the solicitation by means of pre-bid conferences and issuance of amended specifications in accordance with these Rules, all responses are found to be non-responsive as a result of the same defect(s) in the specification or other solicitation documents.

(2) When using this procedure, the ACCO shall:

- (i) make a determination that:
 - (A) five or more bids have been received in response to the original solicitation;
 - (B) all of the bids have been found to be non-responsive as a result of the same previously unresolved defect(s) in the solicitation documents; and
 - (C) prior to opening the bids the agency had made diligent efforts to discover and correct defects in the solicitation documents by inviting questions from prospective bidders, holding pre-bid conferences, and issuing amendments to the solicitation documents as appropriate;
- (ii) prepare a corrected solicitation containing the statement that it is a correction of a previously defective solicitation, setting forth the new bid opening date and time, and conspicuously identifying the portions of the original solicitation that have been corrected; and
- (iii) deliver the corrected solicitation at least ten days in advance of the new bid opening date and time to all bidders who responded to the initial notice of the solicitation by obtaining copies of the original solicitation documents, whether or not they actually submitted bids.

(x) Rejection of All Bids and Negotiation With All Responsible Bidders. Under the circumstances set forth in this subdivision, the ACCO may determine that it is appropriate to cancel the IFB after bid opening and before supplier selection, and to complete the acquisition by negotiation. This authority may not be further delegated.

- (1) This determination shall be based on one of the following reasons:
 - (i) all otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the ACCO cannot determine the reasonableness of the bid price, or
 - (ii) in the judgment of the ACCO, the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
- (2) When the ACCO has determined that an IFB is to be canceled and that use of negotiation is appropriate to complete the acquisition, the ACCO may negotiate and select a supplier without issuing a new solicitation subject to the following conditions:

(i) prior notice of the intention to negotiate and a reasonable opportunity to negotiate have been given by the ACCO to each responsible bidder that submitted a bid in response to the IFB,

(ii) the negotiated price is the lowest negotiated price offered by any responsible bidder, and

(iii) the negotiated price is lower than the lowest rejected bid price of a responsible bidder that submitted a bid in response to the IFB.

(y) Disposition of Bids. All bids shall be retained in the agency contract file. When bids are rejected or a solicitation canceled after bids are received, the bids shall be retained in the agency contract file but the bid security, if any, shall be promptly returned, and the file so documented.

Section 3-03 **COMPETITIVE SEALED PROPOSALS.**

(a) The Request for Proposals (RFP) – Contents. RFPs shall include the following data:

(1) statement of work or scope of services statement, performance requirements, and any special instructions;

(2) the specific criteria and the relative weight of each criterion or category of criteria that will be used to evaluate the proposals;

(3) proposals submission requirements including the time and date after which proposals will not be accepted as well as location of proposal submission;

(4) other information such as delivery dates or time frames within which the work must be completed. Where it is anticipated that a contract will extend beyond one year, the following information must be included in any solicitation, in addition to any other requirements of these Rules:

(i) a statement of intent to award a multi-term contract, and an estimate of the quantity of services required for the proposed contract period;

(ii) for client services only, a request for a proposal of a total price which shall be binding in the first year and may be negotiable from year to year thereafter;

(iii) that the multi-term contract is subject to modification or cancellation if adequate funds are not appropriated to the agency to

support continuation of performance in any fiscal year succeeding the first;

(iv) that the multi-term contract is subject to modification or cancellation if the supplier's performance is not satisfactory;

(v) that the Contracting Officer shall notify the supplier as soon as is practicable that the funds are, or are not, available for the continuation of the multi-term contract for each succeeding fiscal year;

(vi) for client services only, whether proposers shall submit prices for the first year, for the entire period of performance, or for some portion of the period; and

(vii) a statement setting forth those costs (if any) for which the supplier will be reimbursed in the event of cancellation;

(5) general as well as special terms and conditions, if applicable;

(6) a notice of the proposer's rights to appeal certain decisions;

(7) a notice of the City's prompt payment policy, including an explanation of the requirements for invoicing;

(8) a notice that prices shall be irrevocable until contract award, unless the proposal is withdrawn, and that offers may be withdrawn only after the expiration of ninety days (or such longer period as is specified in the solicitation) after opening of proposals, in writing received by the agency prior to award;

(9) a requirement for acknowledgment of amendments;

(10) if applicable, a request for a description of experience in the line of work being considered (including references);

(11) if applicable and necessary in the judgment of the Contracting Officer, a request for description of staff capability along with the resumes of key individuals who will work on the contract;

(12) if applicable, request for cost breakdown of the proposed price;

(13) a notice that although discussions may be conducted with offerors submitting acceptable proposals, award may be made without any discussions;

(14) if applicable, provision on the submission and consideration of multiple or alternate proposals;

(15) a provision that proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposals;

(16) a notice that contract award is subject to the provisions of the MacBride Principles Law;

(17) a notice that contract award is subject to applicable provisions of federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity;

(18) if applicable, a notice that contract award is subject to completion of a VENDEX questionnaire and review of that information by the Department of Investigation;

(19) if applicable for construction and construction-related services contracts, a notice that contract award is subject to the provisions of Section 6-108.1 of the New York City Administrative Code relating to the LBE program and its implementation rules;

(20) where applicable, all information required pursuant to Section 312(a) of the Charter;

(21) the following statement:

The New York City Comptroller is charged with the audit of contracts in New York City. Any supplier who believes that there has been unfairness, favoritism, or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; telephone number (212) 669-3000;

and

(22) name, address, and telephone number of contact person.

(b) Client Services Open RFPs. For a program in which there is available funding for more than the available responsible suppliers, and for which the requirements and qualifications are unusually complex and difficult to predict (such as Uniform Land Use Review Procedures approvals of appropriate sites, licenses, etc.) and for which interested potential suppliers may become qualified during the course of a year, the ACCO may designate the applicable RFP as an "open-ended RFP." If an RFP is so designated, the agency shall publish in the City Record quarterly a notice of solicitation, clearly stating that the RFP may be obtained at any time and

that proposals may be submitted in response to the RFP on an on-going basis. When an agency decides to terminate the open-ended RFP, it shall publish such determination in the City Record.

(c) Proposal Preparation Time and Form.

(1) Proposal preparation time shall be set to provide suppliers a reasonable time to prepare their proposals. A minimum of twenty days shall be provided. The manner in which proposals are to be submitted, including any forms for that purpose, shall be designated as a part of the RFP.

(2) For client services, the ACCO shall be responsible for ensuring that an extract or copy of the scope of work is available for public inspection upon request at the agency issuing the solicitation and that the notice of the solicitation includes a description of the proposed service area and the name and telephone number of an agency individual who can be contacted to provide a copy of the extract or the scope of work.

(d) Public Notice.

(1) Notice of Solicitation.

(i) Distribution. RFPs or notices of their availability shall be mailed or otherwise furnished to a sufficient number of suppliers, including all suppliers on the bidders list at least twenty days prior to the due date, or within the time frames authorized by Section 3-03 (h).

(ii) Publication. This subparagraph shall apply to RFPs above the small purchase limits except that it shall not apply where suppliers will be solicited from a PQL.

(A) Frequency. Notice of solicitation shall be published once in the City Record not less than twenty days before the proposal opening date with the exception of accelerated procurements, which shall appear not less than three business days before the proposal opening date.

(B) Content. Such notice shall include:

((a)) agency name;

((b)) PIN;

((c)) title and/or brief description of the goods, services, or construction to be procured;

((d)) estimated quantity, if any;

((e)) how the solicitation documents may be obtained;

((f)) date and time by which, and the place where, proposals shall be submitted; and

((g)) required supplier qualifications or eligibility requirements, if any.

(2) Notice of Supplier Selection.

(i) Frequency. Notice of supplier selection exceeding the small purchase limits shall be published once in the City Record within fifteen days after registration of the contract.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction to be procured;

(D) name and address of the supplier;

(E) dollar value of the contract; and

(F) procurement method by which the contract was let.

(e) Competitive Sealed Proposals from Prequalified Suppliers List. Proposals may be solicited from suppliers who have been previously prequalified. A determination to employ selective solicitation within a particular category of procurement shall be made by the ACCO and approved by the CCPO prior to issuing solicitations.

(f) RFP Handling Procedures.

(1) Pre-Proposal or Pre-Solicitation Conferences. Pre-proposal or pre-solicitation conferences may be conducted in the manner set forth in Section 3-02 of these Rules.

(2) Amendments to RFPs. Amendments to RFPs may be made in the manner set forth in Section 3-02 of these Rules.

(3) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn prior to the established due date in the manner set forth in Section 3-02

of these Rules. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any, or if discussions have begun, it is the time and date by which best and final offers must be submitted.

(4) Late Proposals and Modifications. Any proposal or modification received after the established due date and time at the place designated for receipt is late and may be accepted only in the manner set forth in paragraphs (5) through (8) below.

(5) Handling and Acceptance of Late Proposals. A late proposal may only be accepted when it is determined by the ACCO that it is in the best interest of the City to do so. In such event, the ACCO may hold open the receipt of proposals by no more than three hours during which time no other competing proposal may be opened. An opened proposal shall eliminate the possibility of accepting any late proposal. Where an ACCO has determined that it is in the best interest of the City to accept a late proposal, any other late proposal received during the period of extension shall be similarly accepted.

(6) Documentation of Late Proposals. The ACCO shall, within one business day of such acceptance of late proposals, place in the contract file a statement of the reasons that it is in the best interest of the City to approve the extension, the time extended, the name of any supplier(s) submitting a proposal received during the extension period established pursuant to paragraph (5) above, as well as an affirmative statement that no proposals were opened prior to the acceptance of the late proposal and that any other late proposal received during the period of extension was similarly accepted.

(7) Late Modifications. A late modification of a successful proposal that makes its terms more favorable to the City shall be considered at any time it is received and, if accepted by the ACCO, shall be so documented in the Recommendation for Award.

(8) Record. A record shall be made of each request for acceptance of a late proposal or modification, which shall be retained in the agency contract file. A late proposal or modification that is not accepted by the ACCO shall not be opened until after registration of the contract.

(9) Receipt and Registration of Proposals. The identify of an offeror shall not be disclosed prior to the established date and time for receipt of proposals. Proposals shall not be opened publicly but shall be opened in the presence of two or more City employees. Proposals and modifications shall be time and date-stamped upon receipt and held in a secure place until the established due date and time. After the date and time established for the receipt of proposals, a Register of Proposals shall be prepared and shall be open to public inspection after award

of a contract. It shall include for all proposals the name of each offeror and the number of modifications received, if any.

(g) Evaluation Process. The RFP must state all of the evaluation factors, including price, and their relative weight. Selection shall be based on the evaluation factors set forth in the RFP. Factors not specified in the RFP shall not be considered.

(1) Evaluation Committee. Proposals shall be reviewed by an evaluation committee consisting of no fewer than three persons with knowledge, expertise, and experience sufficient to make a fair and reasonable evaluation.

(2) Rating Sheets. Ratings sheets or other written evaluation forms shall be used to evaluate proposals and shall be signed and dated by all members of the evaluation committee. Initial ratings may be amended and the amended ratings recorded on amended ratings sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained as part of the agency contract file.

(3) Proposal Discussions with Individual Offerors. The evaluation committee shall evaluate all proposals and may elect to enter into discussions with those whose proposals are acceptable or are reasonably likely to be made acceptable for the purpose of:

(i) promoting understanding of the City's requirements and the suppliers' proposals and capabilities,

(ii) obtaining the best price for the City, and

(iii) arriving at a contract that will be most advantageous to the City taking into consideration price and the other evaluation factors set forth in the RFP.

(4) Conduct of Discussions.

(i) Proposers shall be accorded fair treatment with respect to any opportunity for discussions and revisions of proposals.

(ii) The ACCO shall establish an agenda and schedule for conducting discussions.

(iii) If there is a need for any substantial clarification of, or change in, the RFP, the RFP must be amended to incorporate such clarification or change and shall be provided to all proposers.

(iv) Auction techniques (revealing one proposer's price to another) and disclosure of any information derived from competing proposals are prohibited.

(v) Any oral clarification of a proposal shall be confirmed in writing by the proposer.

(5) Best and Final Offers. Best and final offers are the revised and corrected final proposals submitted by proposers after discussions, if any, have been held by the procuring agency.

(i) The ACCO shall establish a common date and time for the submission of best and final offers.

(ii) Best and final offers shall be submitted only once unless it is determined by the ACCO that it is in the City's best interest to conduct additional discussions and/or require another submission of best and final offers. In that case, the determination must be made in writing by the Contracting Officer and approved by the ACCO and be made a part of the agency contract file.

(iii) Proposers shall be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(iv) All best and final offers shall be recorded on the Register of Proposals and handled in accordance with the control procedures contained in these Rules.

(v) The ACCO may request best and final offers on the whole proposal or on any one or combination of its component parts (e.g., price, technical qualifications, approach, and/or capability). The request shall be the same for all proposers.

(vi) Best and final offers shall be evaluated in accordance with this subdivision.

(h) Construction-Related Services.

(1) There are two categories of construction-related services that an agency may procure: Non-Complex and Complex.

(2) Where applicable for the procurement of Non-Complex and Complex construction-related services, the following alternative source selection procedures may be utilized.

(i) Non-Complex Construction-Related Services. Prior to utilizing either of the two alternative source selection procedures described in this subparagraph, the ACCO must determine what constitutes for the agency

Non-Complex construction-related services and submit this definition to the Director of the Mayor's Office of Construction (ODC) for approval. The ACCO must additionally provide the basis for a determination that the particular service being procured conforms to the agency's ODC-approved definition of a Non-Complex construction-related service. The approved ODC definition and the basis for the determination that the particular service conforms to that definition shall be included in the agency contract file.

(A) Alternative #1. To procure a particular Non-Complex construction-related service, the agency prepares a scope of services, randomly selects a supplier from the appropriate PQL, and offers the project to the selected supplier based upon an applicable, updated OMB fee-curve scale or an appropriate fee-curve scale developed by the agency and approved by OMB. A supplier will have at least seven days to accept or reject the project.

(B) Alternative #2. 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 PQL. The selected suppliers will have at least fifteen days to respond. The agency will evaluate the submitted proposals and enter into negotiations with the supplier(s) offering the best combination of technical quality and price.

(ii) Complex Construction-Related Services. The agency prepares an RFP and solicits technical and cost proposals from suppliers selected randomly, rotationally, and/or based on a determination that a supplier(s) is the best qualified from the appropriate PQL. Where only random and/or rotational selection is utilized, a minimum of three suppliers shall be selected; where selection based on a best qualified determination is utilized, either alone or in combination with random and/or rotational selection, a minimum of five suppliers shall be selected. The selected suppliers will have at least twenty days to respond. The agency will evaluate the submitted proposals and enter into negotiations with the supplier(s) offering the best combination of technical quality and price.

(i) Mistakes in Proposals.

(1) Confirmation of Proposal. When the ACCO knows or has reason to conclude before award that a mistake has been made, he or she should request the proposer to confirm the proposal. If the proposer alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in this subdivision are met.

(2) Mistakes Discovered After Receipt of Proposals but Before Supplier Selection.

(i) During Discussions Prior to Best and Final Offers. Once discussions are commenced with any proposer or after best and final offers are requested, any offeror may correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(ii) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror, shall be treated in accordance with Section 3-02(m)(3)(i) of these Rules.

(iii) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only in accordance with Section 3-02(m)(3)(ii) of these Rules.

(3) Mistakes Discovered After Supplier Selection. Mistakes shall not be corrected after supplier selection except in accordance with Section 3-02(m)(4) of these Rules.

(4) Determinations Required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a determination shall be prepared in accordance with Section 3-02(m)(5) of these Rules.

(j) Award and Documentation. The Contracting Officer shall make a determination showing the basis on which the award was found to be most advantageous to the City based on the evaluation factors set forth in the RFP. This determination shall be included in a written Recommendation of Award which shall be approved by the ACCO. Each Recommendation for Award shall include at a minimum the following information and shall be made a part of the agency contract file:

- (1) justification of the award;
- (2) if the award is for goods, services, or construction for which there is agency price history, a price comparison of the proposed price versus previous price, if applicable, with the rationale for any increases supported by cost/price analysis data;
- (3) reasons for multi-term, multiple award, incremental award contracts;
- (4) any special terms and conditions included in the proposed contract via the use of cost/price analysis techniques;
- (5) affirmative finding of responsibility for the selected proposer(s); and

- (6) efforts to negotiate better value.

Upon determination of the most favorable proposal and after obtaining all required approvals, the Contracting Officer shall award the contract to that proposer.

Section 3-04 **NEGOTIATED ACQUISITION.**

(a) **Policy.** Negotiated acquisition may be used for all categories of procurement under the circumstances and subject to the conditions set forth in this section. Authority for approvals or determinations required by this section shall not be delegated, unless otherwise stated herein.

(b) **Procedures.**

(1) **Preliminary Discussions.** An agency may engage in preliminary discussions with a supplier to explore the feasibility of a proposed negotiated acquisition. Discussions are not negotiations for the selection of a supplier.

(2) The ACCO shall justify the use of the negotiated acquisition method by making a determination that it is not practicable and/or advantageous to award a contract by competitive sealed bidding or competitive sealed proposals due to one or more of the following circumstances and the basis thereof:

(i) there is a time-sensitive situation where a supplier must be retained quickly because:

(A) an agency needs to respond to a court order, stipulation, or consent decree;

(B) funds available from a source outside the City will be lost to the City;

(C) an existing supplier has been terminated, has defaulted, has withdrawn from, or has repudiated a contract, or has become otherwise unavailable, or an agency has decided not to renew or extend an existing contract in the best interest of the City and the agency requires a substitute or successor supplier; or

(D) a compelling need for goods, services, construction, and/or construction-related services exists that cannot be timely met through competitive sealed bidding or competitive sealed proposals;

(ii) there is a limited number of suppliers available and able to perform the work;

(iii) there is a compelling need to extend a contract one or more times beyond the now-permissible cumulative twelve-month limit, provided that the supplier's performance is satisfactory or that any deficiencies have been or are addressed or are effectively addressed through a corrective action plan, and the extension(s) is for the minimum time necessary to meet the need;

(iv) there is a need to procure legal services or consulting services in support of current or anticipated litigation, investigative or confidential services:

(A) in the case of legal services or consulting services in support of current or anticipated litigation, unless otherwise provided by law, the Corporation Counsel or designee shall make this determination;

(B) in the case of investigative or confidential services, the Mayor or designee, the Corporation Counsel, or the Commissioner of DOI, whichever is applicable, shall make this determination;

(v) there is a need to procure construction-related services for a later phase of an ongoing complex construction project from the same supplier where it is not practicable to define the full scope of work at the beginning of the project, the original solicitation included notice that the selected supplier may be the only supplier eligible for later phases of the project, there are compelling programmatic reasons to use the same supplier for the successive phases, and the supplier's performance is satisfactory;

(vi) there is a need to procure changed or additional work on an ongoing construction project when an agency wishes to retain a new supplier because it is not practicable or advantageous to award such work by change order or modification to the original supplier;

(vii) there is a need to procure construction when, during an ongoing construction project, there is a compelling necessity to perform additional work, which constitutes a material change of scope, and the advantages of negotiating with either an existing supplier or a limited number of other suppliers clearly outweigh the disadvantages of a lack of competition; or

(viii) there is a need to procure investment services, as described herein.

(3) The CCPO shall approve the use of the negotiated acquisition method for a particular procurement or for a particular type of procurement prior to the solicitation of suppliers.

(4) The agency shall negotiate with all qualified suppliers that have expressed interest unless the ACCO determines for a particular procurement or for a particular type of procurement that it is in the City's best interest to negotiate with fewer suppliers, and the CCPO approves such determination.

(5) The ACCO or designee shall maintain a written record of the conduct of negotiations and the basis for every determination to continue or suspend negotiations with each supplier.

(6) The ACCO shall make a determination that award of the contract is in the best interest of the City and the basis thereof.

(7) Subparagraphs (1)(ii) and (iii) shall not apply to construction and/or construction-related services.

(c) Investment Services. The preferred method for procuring investment services is competitive sealed proposals. Negotiated acquisition may be used for one or more City pension funds or variable supplements funds to award a contract to a supplier that has been providing investment management services under a program to foster the growth of small or new investment managers ("the emerging manager program") as a manager or submanager, under the following conditions:

(1) the fund(s) have determined in writing, pursuant to a vote of its or their trustees, upon the presentation by the Comptroller or designee of his or her recommendation and after having been provided with a presolicitation report and such information from an investment consultant as the fund(s) deem necessary, that it is in the best interest of the fund(s) for the Comptroller to award a contract through negotiated acquisition;

(2) the term of an emerging manager investment management contract (including all renewal and extension periods) will expire or the emerging manager investment contract within which the submanager provided services has expired or been terminated;

(3) the services provided by the manager or submanager are still required;

(4) the assets under management have grown beyond the fund's maximum selection eligibility level so that the manager or submanager could not be selected to participate in the emerging manager program;

(5) in the case of a submanager, the assets under management of the submanager have grown sufficiently to make it eligible under the Comptroller's guidelines for a direct contract;

(6) there is no competitive sealed proposals process for the manager or submanager's eligibility level and type of investment service in which the

manager or submanager could participate or could have participated so that the services which it provides would not be disrupted;

(7) the term of the new contract shall not extend beyond the commencement date of contracts awarded pursuant to a competitive sealed proposal process for a class of managers applicable to the manager or submanager for which the manager or submanager became eligible to compete, and in no event shall be longer than three years (including all renewal and extension periods);

(8) over the immediately preceding market cycle of at least three years, the manager or submanager has both (i) exceeded the performance of generally accepted indices applicable to the investment services provided, and (ii) performed in the top fifty percent of firms in the marketplace providing a similar kind of investment service, as measured by generally recognized performance benchmarks contained in the Comptroller's guidelines applicable to the investment service provided;

(9) upon the request of a trustee(s), an investment manager proposed for award under this provision shall be made available to respond to questions related to the proposed award; and

(10) no contract procured pursuant to this provision may be executed without the approval of the fund(s), pursuant to a vote of its or their trustees, after a presentation by the Comptroller or his or her designee and submission of the Recommendation for Award and proposed contract.

(d) Public Notice. This subdivision shall not apply to negotiated acquisition below the small purchase limits or where the Corporation Counsel or designee has made a determination that such notice may disclose litigation strategy or otherwise impair the conduct of litigation by the City.

(1) Notice of Intent to Enter into Negotiations. This paragraph shall not apply where negotiations will be entered into with suppliers solicited solely from a PQL or where time constraints beyond the agency's control make such advance notice impractical.

(i) Frequency. Notice of intent to enter into negotiations shall be published in the City Record for five consecutive editions. The last date of publications of such notice shall appear no fewer than ten days before negotiations are expected to begin.

(ii) Content. Such notice of intent shall include:

(A) agency name;

(B) PIN;

- (C) purchase description;
- (D) estimated quantity, if any;
- (E) name(s) of the proposed supplier(s), if applicable;
- (F) summary of the basis of the determination to use negotiated acquisition;
- (G) projected contract start and expiration dates; and
- (H) how suppliers may express interest in the instant procurement or in such procurement in the future, as applicable.

(2) Notice of Award.

(i) Frequency. Notice of contract award shall be published at least once in the City Record within fifteen days after registration of the contract.

(ii) Content. Such notice of award shall include:

- (A) agency name;
- (B) PIN;
- (C) purchase description;
- (D) name and address of the supplier;
- (E) dollar value of the contract;
- (F) date of the published notice of intent to enter into negotiation, if applicable; and
- (G) contract start and expiration dates.

Section 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 good, service, or construction. In such case, the accepted price and terms and conditions shall be achieved through negotiation between the agency and the supplier. This section shall apply to all sole source procurements over \$2,500.

(b) Determination. Prior to entering into sole source negotiations, the ACCO shall make a written 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, 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 Section 2-02.

(3) A copy of the determination shall be forwarded within five 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 consecutive editions no fewer than ten calendar days before negotiations are expected to begin. Such notice shall solicit expressions of interest from suppliers 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. This written statement shall be retained in the contract file.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction procured;

- (D) estimated quantity, if any;
- (E) name of the proposed supplier;
- (F) summary of the determination;
- (G) how qualified suppliers may obtain an application, or express their interest in providing such goods, service, or construction; and
- (H) due date.

(2) Notice of Award.

(i) Frequency. Notice of a contract award exceeding the small purchase limits shall be published at least once in the City Record, within fifteen calendar days after registration of the contract.

(ii) Content. Such notice shall include:

- (A) agency name;
- (B) PIN;
- (C) title and/or brief description of the goods, services, or construction procured;
- (D) name and address of the supplier;
- (E) dollar value of the contract;
- (F) the date of the published notice of intent to enter sole source negotiations; and
- (G) summary determination of the basis for the sole source procurement.

(d) Approvals. The award of any sole source contracts shall be approved in writing by the Agency Head or the ACCO or other designated senior official. This authority shall not be further delegated.

Section 3-06 EMERGENCY PURCHASES.

(a) Definition of Emergency Conditions. An emergency condition is an unforeseen danger to life, safety, property, or a necessary service. The existence of such a condition creates

an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods.

(b) Scope. An emergency procurement shall be limited to the procurement of those items necessary to avoid or mitigate serious danger to life, safety, property, or a necessary service.

(c) Authority to Make Emergency Purchases.

(1) Any agency may make an emergency procurement when an emergency arises and the agency's resulting need cannot be met through normal procurement methods.

(2) The Agency shall obtain the prior approval of the Comptroller and the Corporation Counsel.

(3) The Agency shall submit at the earliest practicable time a written determination of the basis of the emergency and the selection of the contractor, as set forth in Section 3-06(e)(3) of these Rules to the Comptroller and the Corporation Counsel for written approval as soon as possible.

(d) Source Selection. The procedure used shall assure that the required items are procured in time to meet the emergency. Given this constraint, such competition as is possible and practicable shall be obtained.

(e) Public Notice and Filing Requirements. Solicitations in emergency procurements are subject to the following public notice and reporting requirements:

(1) Solicitations pursuant to a finding of emergency are not required to be published in the City Record.

(2) The agency shall publish notice of the award of the emergency contract in accordance with Section 3-06(f).

(3) A written determination of the basis for the emergency and the selection of the supplier shall be filed with the Corporation Counsel and the Comptroller and shall include:

- (i) the date emergency first became known;
- (ii) a list of goods, services, and construction procured;
- (iii) the names of all suppliers solicited;
- (iv) the basis of supplier selection;

- (v) contract prices;
- (vi) the past performance history of the selected supplier;
- (vii) a listing of prior/related emergency contract; and
- (viii) PIN.

(f) Notice of Award.

(1) Frequency. Notice of a contract award exceeding the small purchase limits shall be published at least once in the City Record, within fifteen calendar days after contract registration.

(2) Content. Such notice shall include:

- (i) summary determination of the basis for the emergency stated to be either a case of an unforeseen danger to life, safety, property, or a necessary service;
- (ii) agency name;
- (iii) PIN;
- (iv) title and/or brief description of the goods, services, or construction procured;
- (v) name and address of the supplier;
- (vi) dollar value of the contract;
- (vii) procurement method by which the contract was let; and
- (viii) citation of the reason under Section 315 of the City Charter providing justification for the chosen method of procurement.