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§ 2-08 Vendor Responsibility and Appeal of Determination of Non-Responsibility.

(a) *Policy.*

(1) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

(2) The award of a contract to a contractor based on lowest evaluated price alone can be false economy if there is subsequent default, improper or exaggerated claims, late deliveries, or other unsatisfactory performance resulting in additional contractual and administrative costs. While it is important that City purchases be made at the lowest price, this does not require an award to a contractor solely because that contractor submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

(b) *General standards.*

(1) A responsible contractor is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars.

(2) Factors affecting a contractor's responsibility may include:

(i) financial resources;

(ii) technical qualifications;

(iii) experience;

(iv) organization, material, equipment, facilities, and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments;

(v) a satisfactory record of performance;

(vi) a satisfactory record of business integrity;

(vii) where the contract includes provisions for reimbursement of contractor costs, the existence of accounting and auditing procedures adequate to control property, funds, or other assets, accurately delineate costs, and attribute them to their causes; and

(viii) compliance with requirements for the utilization of small, minority-owned, and women-owned businesses as subcontractors.

(3) Failure of a firm to provide relevant information specifically requested by the Contracting Officer may be grounds for a determination of non-responsibility.

(c) *Special standards.*

(1) When it is necessary for a particular contract or class of contracts, the Contracting Officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that certain minimum experience or specialized facilities are needed for adequate contract performance.

(2) The special standards shall be set forth in the solicitation (and so identified) and shall apply to all bidders/proposers.

(3) Special standards must be based on demonstrated need and must not be used to artificially limit competition.

(d) *Ability To meet standards.*

(1) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(i) evidence that such contractor possesses such necessary items;

(ii) acceptable plans to subcontract for such necessary items; and

(iii) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(2) A prospective contractor that has performed unsatisfactorily shall be presumed to be non-responsible, unless the Contracting Officer determines that the circumstances were beyond the contractor's control or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of non-responsibility.

(e) *VENDEX questionnaire.*

(1) *Definitions.* For purposes of this section only, the following definitions apply:

Affiliate. An entity in which the parent of the contractor owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the contractor also owns more than fifty percent of the voting stock.

Contract. Any agreement between an agency, elected official, or the Council and a contractor, or any agreement between such a contractor and a subcontractor which:

(i) is for the provision of goods, services, or construction and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at \$250,000 or more, or

(ii) is for the provision of goods, services, or construction, is awarded to a sole source, and is valued at \$10,000 or more.

Contractor. All individuals, sole proprietorships, partnerships, joint ventures, or corporations who enter into a contract, as defined herein, with an agency, an elected official, or the Council.

Officer. Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known.

Parent. An individual, partnership, joint venture, or corporation which owns more than fifty percent of the voting stock of a contractor.

Principal Owner. An individual, partnership, joint venture, or corporation which holds a ten percent or greater ownership interest in a contractor or subcontractor.

Subcontract. Any contract, as defined herein, between a subcontractor and a contractor.

Subcontractor. An individual, sole proprietorship, partnership, joint venture, or corporation which is engaged by a contractor pursuant to a contract,

as defined herein.

(2) *Obligation to file questionnaires.* VENDEX questionnaires shall be completed and filed by the contractor at least once within each three year period within which such contractor does business with the City. Each contractor shall certify at the time of award of each contract that all the information submitted within such three year period is current, accurate and complete. If changes have occurred within the three year period, the contractor shall update, prior to contract award, any previously-submitted VENDEX questionnaire to supply any changed information, and shall certify that both the updated and unchanged information is current, accurate and complete. If VENDEX questionnaires have not been submitted within three years, then such questionnaires shall be completed and filed:

(i) by applicants, at the time of an application for inclusion on a prequalified list, provided that this requirement shall not apply to applications under HHS Accelerator pursuant to 9 RCNY § 3-16;

(ii) by contractors, when requested by an agency or by the CCPO, but in any event before the Recommendation for Award is approved or not later than:

(A) thirty days after registration of the contract in the case of a contract of whatever value if the aggregate value of City contracts, franchises, and concessions awarded to that contractor including this one during the immediately preceding twelve-month period equals or exceeds \$250,000, and

(B) thirty days after registration of the contract, where permitted pursuant to paragraphs (3) and (4) of this subdivision; or

(iii) by subcontractors, within thirty days after the ACCO has received from the prime contractor written notification of the identity of the proposed subcontractor and granted preliminary approval, if the aggregate value of City contracts, franchises, and concessions awarded that subcontractor including this one during the immediately preceding twelve-month period equals or exceeds \$250,000.

(3) *Late filing of information: when permitted.* The VENDEX questionnaire may be submitted within thirty days after registration of the contract as provided in paragraph (4) of this subdivision in the following circumstances:

(i) emergency procurements as defined by 9 RCNY § 3-06;

(ii) accelerated purchases as defined by 9 RCNY § 3-07;

(iii) on a contract-by-contract basis where the CCPO, upon the written request of the ACCO, has determined that expedited procurement action is required due to urgent circumstances;

(iv) buy-against procurements pursuant to 9 RCNY § 4-07 where the contractor has not previously submitted a VENDEX questionnaire; and

(v) on a contract-by-contract basis with respect to information not required by local law where the CCPO, upon the written request of the ACCO, has determined that a specific portion of the information required by the questionnaire but not by local law is not accessible to the contractor despite good faith efforts to complete the filing in a timely fashion. The determination shall set forth with particularity the information which may be submitted late and the reasons for the later completion of the filing, and shall include the specific date by which the information shall be submitted.

(4) *Late filing of information: required findings.* In the circumstances set forth in paragraph (3) of this subdivision, the VENDEX questionnaire may instead be submitted after registration of the contract, provided that:

(i) the ACCO has notified the contractor in writing of its obligation to submit the VENDEX questionnaire as set forth in subdivision (e)(2) above;

(ii) the ACCO has determined that sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility prior to receipt of the questionnaire; and

(iii) in addition, where the basis for the delayed submittal is an expedited procurement action due to urgent circumstances, the ACCO must provide a separate additional determination setting forth the specific documented reasons it is not feasible for the contractor to complete all or some specific portion of the VENDEX questionnaire as set forth in subdivision (e)(2) above. The ACCO's determination shall include the name and telephone number of the authorized representative of the contractor who provided information on which the ACCO relied in making the non-feasibility determination.

(5) *Exemption: information not required by local law.* On a contract-by-contract basis, where a contractor demonstrates compelling reasons that it is not feasible to supply a specifically identified portion of information which is required by the questionnaire but not by local law, the CCPO may exempt a contractor from the requirement to supply that portion of the required information, upon the written application of the ACCO setting forth with particularity:

(i) the efforts to obtain the required information;

(ii) the name and telephone number of the authorized representative of the contractor who made the request for exemption on behalf of the contractor;

(iii) the information to be covered by the exemption;

(iv) the compelling reasons why an exemption should be granted in this case, including why the circumstances are such that it is in the best interests of the City that the contract be awarded to this contractor; and

(v) the basis for finding the sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility absent the exempted information. In these cases the CCPO shall state the reasons that granting the exemption serves the best interests of the City and shall provide a copy of this determination to the Comptroller within five days.

(6) *Exemption: sole source.* In the case of a specific contract awarded in accordance with the sole source provision of 9 RCNY § 3-05 where a contractor refuses to supply some portion of the required information, but the need for the goods, services, or construction is such that it is in the best interests of the City that the contract be awarded, the CCPO may exempt the contractor from the requirement for some specifically identified portion of information required by local law concerning the creation and maintenance of a computerized data base upon the written application of the ACCO setting forth with particularity:

(i) the efforts to obtain the required information;

(ii) the name and telephone number of the authorized representative of the contractor who refused, on behalf of the contractor, to supply the required information;

(iii) the information to be covered by the exemption;

(iv) the reasons why an exemption should be granted in this case; and

(v) the basis for finding that sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility absent the exempted information.

(7) *Reporting requirement for late filings and exemptions.* A copy of the written request of the ACCO and the determination of the CCPO permitting late filing of required information pursuant to subdivision (e)(3) and (4) of this section, or granting an exemption pursuant to subdivision (e)(5) and (6) of this section shall be filed by the CCPO with the Comptroller within five days after it is made or approved by the CCPO.

(8) *Contract terms and conditions.*

(i) *Late filing.* Whenever the CCPO has permitted the filing of some or all of the required information within thirty days after the registration of the contract, the contract shall contain a clause requiring the submission of the required information within the required time period as a material term and condition of the contract and permitting termination without penalty to the City for violation of the condition, or in the event that:

(A) the Mayor or his/her designee determines on the basis of the belatedly filed information that it is in the best interest of the City to terminate the contract, and/or

(B) the Comptroller or his/her designee determines that the belatedly filed information reveals matters which if provided earlier would have provided a basis for an objection to registration of the contract by the Comptroller and the Mayor or his/her designee determines that he/she would have agreed with such determination and therefore it is in the best interest of the City to terminate the contract.

(ii) *Subcontractors.* Where appropriate, City contracts shall contain a clause requiring prime contractors to notify subcontractors of their obligation to complete and file VENDEX Questionnaires within thirty days after the ACCO has granted preliminary approval of the identified subcontractor, if the aggregate value of City contracts, franchises, and concessions awarded to a subcontractor during the immediately preceding twelve-month period equals or exceeds \$250,000.

(9) *Failure to submit information as required: consequences.* Whenever a late filing of required information has been permitted in accordance with subdivision (e)(3) and (4) of this section and the contractor has failed to submit the required information within the required time period, that fact shall be communicated to the CCPO and the Comptroller immediately and shall be included within the VENDEX data base. Until such time as the required information has been filed with the CCPO,

(i) no further contract shall be awarded to that contractor,

(ii) the contractor shall be ineligible to bid or propose or otherwise be awarded a further contract, and

(iii) no payments shall be made to the contractor for performance pursuant to that contract unless authorized in writing by the CCPO.

(10) The Procurement Policy Board shall provide the City Council with periodic reports concerning permission for late filings and exemptions at intervals and with contents agreed upon by the Procurement Policy Board and the City Council.

(11) The questionnaire responses shall be entered into the citywide computerized VENDEX database no later than the completion of the Recommendation for Award.

(f) *Department of investigation and administrative fee.*

(1) Prior to making its determination of vendor responsibility, the agency shall request the Department of Investigation to conduct a Vendor Name Check on the proposed vendor, which shall consist of a review of the names on the Questionnaire and other information to ascertain whether the business or its affiliated individuals are or have, during a relevant period of time, been the subject of an investigation by the Department. The Department of Investigation shall undertake the review expeditiously and provide an explanation to an agency if its review is not completed within thirty calendar days of the request. If the Department of Investigation ascertains that there has been such an investigation, it shall provide a copy of any final report or statement of findings to the Agency Head for use in making the determination of responsibility. If the results of the review are not made available to the agency within thirty calendar days of the request, the agency may make its responsibility determination on the basis of the information then available to it.

(2) For any contract or subcontract that is subject to the Vendor Name Check process set forth in section (f)(1), the CCPO may charge a fee for the administration of the VENDEX system, including the Vendor Name Check process, in the amount of \$175 for contracts of an estimated value less than or equal to \$1,000,000 and \$350 for contracts of an estimated value greater than \$1,000,000. Such fee will be charged against payments made to the vendor on the contract at issue. The timing of the contract award shall not be affected by a fee incurred but not yet paid by the vendor. A prime vendor is responsible for the payment of fees for any subcontractors of the vendor for which Vendor Name Check requests are made. Nothing contained in these Rules shall prohibit a prime vendor from recovering from its subcontractors the amount of such fees attributable to those subcontractors. The VENDEX administrative fee may be waived at the discretion of the CCPO if it is determined that such waiver is in the City's best interest.

(g) *Making the responsibility determination.*

(1) The Contracting Officer shall use the following sources of information to support determinations of responsibility or non-responsibility:

(i) the VENDEX database of debarred, suspended, and ineligible contractors;

(ii) VENDEX and other records of evaluations of performance, as well as verifiable knowledge of contracting and audit personnel;

(iii) determinations of violations of employment-related federal, state, or local law or executive order, including but not limited to those relating to equal employment opportunity, prevailing wage, workplace health and safety, employee benefits, and employee wages and hours;

(iv) information supplied by the prospective contractor, including bid or proposal information, VENDEX and prequalification questionnaire replies, financial data, information on production equipment, and personnel information;

(v) pre-award survey reports; and

(vi) other sources such as publications, suppliers, subcontractors and customers of the prospective contractor, financial institutions, other government agencies, and business and trade associations.

(2) A Contracting Officer may notify the bidder or offeror of unfavorable responsibility information and provide the bidder or offeror an opportunity to submit additional information or explain its actions before adverse action is taken by the City.

(h) *Determination of non-responsibility required.*

(1) If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a determination of non-responsibility setting forth in detail and with specificity the reasons for the finding of non-responsibility shall be prepared by the Contracting Officer.

(2) A copy of the determination of non-responsibility shall be immediately sent to the non-responsible bidder or offeror. Notice to the non-responsible bidder must be mailed no later than two business days after the determination of non-responsibility is made and must inform the contractor of the right to appeal the determination to the Agency Head or designee within ten calendar days of receipt. A copy of the determination of non-responsibility shall also be sent to the CCPO and Comptroller.

(3) The determination of non-responsibility shall be included in the VENDEX database.

(i) *Determination of non-responsibility.* An agency letting a contract by competitive sealed bid or competitive sealed bid from prequalified vendors may find the lowest responsive bidder(s) to be non-responsible in accordance with 9 RCNY § 2-08 of these Rules.

(j) *Notice.* After making a determination of non-responsibility, the ACCO shall notify the lowest bidder in writing of that determination. The notification shall state the reasons upon which the determination is based and shall inform the bidder of the right to appeal the determination of non-responsibility to

the Agency Head and subsequently to the Mayor, and of the procedure for taking such appeals. The notification shall also contain the following statement:

The vendor shall also send a copy of its appeal to the New York City Comptroller, for informational purposes, at Office of the New York City Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, NY 10007, (212) 669-2323.

(k) *Appeal to agency head.* Appeals to the Agency Head of the determination of non-responsibility shall be made pursuant to the following procedure:

(1) *Time for appeal.* Any vendor who is determined to be non-responsible in connection with the award of a particular contract shall be allowed ten days from receipt of the agency's notification to file a written appeal of that determination with the Agency Head. Receipt of notice by the vendor shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Agency Head.

(2) *Form and content of appeal by vendor.* The appeal by the vendor shall be in writing and shall briefly state all the facts or other basis upon which the bidder contests the agency finding of non-responsibility. Supporting documentation shall be included.

(3) *Agency head determination.* The Agency Head shall consider the vendor's appeal, and shall make a prompt written decision no later than sixty days after receipt with respect to the merits of the bidder's appeal, except when such appeal relates to an Office of Labor Services determination of non-compliance with applicable equal employment opportunity requirements. Under such exception, the Office of Labor Services shall review all appeals and shall inform the Agency Head of its recommendation as to the merits of the vendor's appeal within forty-five days. The Agency Head or head of the Office of Labor Services may, in his or her sole discretion, meet with the vendor to discuss his/her appeal. If the Agency Head's determination is not made within the prescribed sixty days after receipt of the appeal, then the vendor may present the appeal to the Mayor.

(4) *Notification to vendor of agency head decision.* A copy of the decision of the Agency Head shall be sent to the vendor. If the Agency Head upholds the ACCO's finding of non-responsibility, the Agency Head shall inform the vendor of the right to appeal the decision to the Mayor, and of the procedure for taking such an appeal.

(5) *Delegation.* The Agency Head may designate a senior agency official, other than the ACCO or his or her subordinates, to consider this appeal.

(6) *Finality.* The Agency Head's decision of a vendor's appeal shall be final unless further appealed to the Mayor.

(l) *Stay of award of contract pending agency head decision.* Award of the contract shall be stayed pending the rendering of a decision by the Agency Head unless the ACCO makes a determination that execution of the contract without delay is necessary to protect substantial City interests. Where the award is not stayed, the vendor shall be advised of this action in the determination of non-responsibility or if the stay is removed at a later date, notification shall be provided to the vendor no later than two business days after such determination is made.

(m) *Appeal to Mayor.* Appeals to the Mayor of the Agency Head decision upholding a determination of non-responsibility shall be made pursuant to the following procedure:

(1) *Delegation.* The Mayor may delegate responsibility for deciding this appeal to the CCPO.

(2) *Time for appeal.* Any vendor who wishes to appeal the decision of the Agency Head shall be allowed ten calendar days from receipt of the Agency Head's notification to file a written appeal of that determination with the Mayor or CCPO. Receipt of notification by the vendor shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the Office of the Mayor.

(3) *Form and content of appeal by vendor.* The appeal by the bidder shall be in writing and shall briefly state all the facts or other basis upon which the bidder contests the agency finding of non-responsibility. Supporting documentation shall be included.

(4) *Mayoral determination.* The Mayor or CCPO shall consider the vendor's appeal, and shall make a prompt written decision with respect to the merits of the vendor's appeal. The Mayor, in the Mayor's sole discretion, may meet with the bidder to discuss the appeal.

(5) *Notification to bidder of mayoral decision.* A copy of the decision of the Mayor or CCPO shall be sent to the vendor.

(6) *Finality.* The decision by the Mayor or CCPO of a vendor's appeal from an Agency Head decision concerning non-responsibility shall be final.

(n) *Stay of award of contract pending decision by Mayor or his designee.* Award of the contract shall be stayed pending the rendering of a decision by the Mayor or CCPO, unless the ACCO has made a determination pursuant to these Rules that the execution of the contract without delay is necessary, or the Mayor or CCPO, in their discretion, determine that it is in the best interests of the City to go forward with the award of the contract.

(o) *Documentation.* Documents reflecting the agency determination of non-responsibility and any appeal and decision with respect to appeal, and evidence of having supplied written notifications as required by these Rules, shall be sent to the CCPO for inclusion in the VENDEX database.

(p) *Rehabilitation of vendors.* An application for a declaration of rehabilitation may be made by any vendor who has been found non-responsible by one or more City agencies, if such vendor has either declined to appeal or exhausted the process for appealing such non-responsibility determination(s) as set forth in this section, or by any vendor that is the subject of any unfavorable responsibility information recorded in the VENDEX database as a caution(s). A declaration of rehabilitation will not result in deletion of the underlying non-responsibility determination or caution from the VENDEX database, but a summary of such declaration or of any decision denying such an application shall be entered into the VENDEX database for consideration by agency Contracting Officers in making future responsibility determinations. In making responsibility determinations, Contracting Officers may rely upon the declaration of rehabilitation in lieu of requiring a vendor to explain negative responsibility information in accordance with subdivision (g) (2) of this section.

(1) *Time for filing.* No application for a declaration of rehabilitation may be filed prior to the latest date for filing of an appeal of a non-responsibility determination in accordance with subdivision (k)(1) of this section. If a vendor pursues an appeal in accordance with subdivision (k)(1) of this section, no application for a declaration of rehabilitation may be filed prior to the latest date for filing of an appeal to the Mayor in accordance with subdivision (m)(2) of this section. The submission of an application for a declaration of rehabilitation shall not toll the time limits set forth in this section for filing an appeal.

(2) *Form and content of filing.* To apply for a declaration of rehabilitation, a vendor must submit a written application to the CCPO. The rehabilitation application shall be certified by the applicant to the effect that all of the information supplied is true to the best of the applicant's knowledge, information and belief. The application shall state how the applicant has demonstrated its responsibility for future procurement awards, and shall:

(i) demonstrate that the issues leading to the relevant non-responsibility determination or to the relevant caution(s) have been remedied by the applicant, and

(ii) set forth any additional remedies or corrective actions the applicant is willing to undertake as a condition of a final declaration of rehabilitation by the CCPO.

(3) *Remedies.* Remedies or corrective actions may include, but are not limited to:

(i) retaining an auditor, monitor, technical consultant or independent private sector inspector general with the consent of the Department of Investigation to review the applicant's business practices, oversee its performance and/or develop specific remedies with respect to the subject matter of the non-responsibility determination(s) or caution(s):

(ii) ownership changes and/or reorganizations of the legal structure of the applicant in a manner that appropriately remedies the issues raised in the non-responsibility determination(s) or caution(s);

(iii) dismissing employees whose actions were the subject matter of the non-responsibility determination(s) or caution(s);

(iv) entering into certification agreements with the Department of Investigation prescribing corrective actions and/or otherwise appropriately remedying the subject matter of the non-responsibility determination(s) or caution(s);

(v) resolving judicial or administrative proceedings that were the subject matter of the non-responsibility determination(s) or caution(s) under terms demonstrating that such concerns have been appropriately remedied; or

(vi) engaging in any other lawful action leading to resolution of the issues that were the subject matter of the non-responsibility determination(s) or caution(s), or demonstrating that any negative responsibility information recorded as a caution has been appropriately remedied.

(4) *Notice to agencies.* The applicant shall concurrently provide a copy of its application for rehabilitation to the Department of Investigation, the Comptroller and to the Contracting Officer of any agency that found such applicant non-responsible or requested that negative responsibility information be entered as a caution in the VENDEX database.

(5) *CCPO decision.* The CCPO shall review the filing, shall consult with the Department of Investigation and may consult with any other relevant government agency, prior to making a final decision concerning the application for a declaration of rehabilitation. The CCPO may seek additional information from the applicant. Upon review of the filing and any subsequent submission by the applicant, the CCPO shall issue a decision granting or denying the application for declaration of rehabilitation. In making such decision, the CCPO may consider a broad range of factors, which may include, but is not limited to, the following:

(i) The public policy expressed in these Rules that the vendors have the capability in all respects to perform fully the requirements of public contracting and the business integrity to justify the award of public tax dollars;

(ii) The bearing of any criminal, false, fraudulent or other activities of the vendor, its affiliates and current and past owners, principals, employees, or their associates or other persons or entities on the skill, judgment and integrity of the vendor or on its fitness or ability to perform as a public contractor, and the time elapsed since and seriousness of such activities;

(iii) Any information produced by the vendor or available from other sources relevant to its rehabilitation, including the adequacy of the remedies or corrective actions identified by the applicant, or to any other factor bearing on the vendor's skill, judgment and integrity or its fitness or ability to perform as a public contractor. The CCPO may condition any declaration of rehabilitation upon the applicant's completion of the specific additional corrective actions, if any, set forth in such declaration. The CCPO decision granting or denying the application for declaration of rehabilitation shall be final and a record of the determination shall be included in the VENDEX database.

(6) *Notification of decision.* A copy of the CCPO decision granting or denying the application for declaration of rehabilitation shall be mailed to the vendor, with copies to the Department of Investigation, the Comptroller and the Contracting Officer of any agency that found such applicant non-responsible or requested that negative responsibility information be entered as a caution in the VENDEX database.

(7) *Effect.* Nothing in this subdivision shall preclude an agency Contracting Officer from finding a vendor to be responsible where such vendor has not applied for a declaration of rehabilitation or where an application for such declaration has been denied. Furthermore, nothing in this subdivision shall preclude an agency Contracting Officer from finding a vendor to be non-responsible, notwithstanding a declaration of rehabilitation.

(Amended City Record 1/29/2016, eff. 3/1/2016; amended City Record 10/1/2018, eff. 11/5/2018; amended City Record 4/17/2024, eff. 5/17/2024)

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 vendors or any other appropriate procurement method may be used.

(c) **Preference for Competitive Sealed Proposals in Certain Contracts.** Procurement by competitive sealed proposals, including, where applicable, through HHS Accelerator, 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 vendors, except as provided in Section 3-10(a) of these Rules;
- (ii) Competitive sealed bidding where the award will be made to the bidder whose bid represents the best value to the City;
- (iii) Competitive sealed proposals (including multi-step process);
- (iv) Competitive sealed proposals from prequalified vendors;
- (v) Negotiated acquisition;
- (vi) Sole source procurement;
- (vii) Demonstration project for innovative products, approaches, or technologies;
- (viii) Innovative procurement method; or
- (ix) 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) it is in the best interest of the City for goods or standard services to be awarded on the basis of best value to the City by optimizing quality, cost, and efficiency;
- (iv) there is only one available source, as set forth in these Rules;
- (v) 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;
- (vi) the need for advance screening of qualifications is paramount and prequalification is appropriate for one of the reasons set forth in these Rules;
- (vii) circumstances justifying the use of negotiated acquisition as set forth in these Rules; or
- (viii) 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, 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.

(b) Invitation for Bids.

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

(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 vendor to explore the feasibility of a proposed negotiated acquisition. Discussions are not negotiations for the selection of a vendor.

(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 vendor 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 vendor 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 vendor; 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 vendors 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 vendor'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 vendor 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 vendor may be the only vendor eligible for later phases of the project, there are compelling programmatic reasons to use the same vendor for the successive phases, and the vendor'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 vendor because it is not practicable or advantageous to award such work by change order or modification to the original vendor;

(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 vendor or a limited number of other vendors 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 vendor.

(4) The agency shall negotiate with all qualified vendors 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 vendors, 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 vendor.

(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) Subparagraph (2)(iii) shall not apply to construction.

(c) Investment Services. Negotiated acquisition may be used for one or more City Retirement Systems to award a contract to a vendor that has been providing investment management services to the Retirement System(s) 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 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 the relevant asset class investment consultant(s) of the Retirement System(s), that it is in the best interest of the fund(s) and the City for the Comptroller to award a contract through negotiated acquisition;
- (2) the manager or submanager has provided investment management services to the pension funds under the Emerging Manager Program for a continuous period of at least twelve months, and where, if such investment management services have ended due to a contract expiration or termination, the contract ended no earlier than three (3) months prior to publication of the notice of intent to enter into negotiations;
- (3) the services provided by the manager or submanager are still required;
- (4) there is no competitive sealed proposals or Investment Manager Search 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 that it provides would not be disrupted;
- (5) the term of the new contract must not extend beyond the commencement date of contracts awarded pursuant to a competitive sealed proposal or Investment Manager Search process for a class of managers applicable to the manager or submanager for which the manager or submanager became eligible to compete;
- (6) over the immediately preceding market cycle of at least three (3) years, the manager or submanager has demonstrated organizational and staffing stability; managed growth of assets; a sound investment strategy and process; strong risk management; consistency of rolling, risk-adjusted, excess, net-of-fee returns relative to its assigned benchmark index; and fair and reasonable fees for services provided;
- (7) upon the request of a trustee(s), an investment manager proposed for award under this provision must be available to respond to questions related to the proposed award; and
- (8) 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 which must include such information as necessary to establish that the manager or submanager meets the conditions for being awarded a contract under this section and provides fair and reasonable fees.

(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 vendors 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 at least once in the City Record at least ten calendar days before negotiations

are expected to begin and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication.

(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 vendor(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 vendors 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 vendor;
- (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 goods, service, or construction. In such case, the accepted price and terms and conditions shall be achieved through negotiation between the agency and the vendor. This section shall apply to sole source procurements exceeding the micropurchase limit set forth in Section 3-08(c)(1)(ii) of these Rules.

(b) Determination. Prior to entering into sole source negotiations, the ACCO shall make a determination that there is only one source for the required good, service, or construction.

- (B) PIN;
- (C) title and/or brief description of the commodities procured;
- (D) name and address of the vendor;
- (E) dollar value of the contract;
- (F) procurement method by which the contract was let, including summary of any “special case” determination made in connection with the award by a “special case” method of procurement, if applicable; and
- (G) summary determination of the basis for the accelerated procurement.

Section 3-08 SMALL PURCHASES.

(a) Definition. Small purchases are those procurements in value of not more than \$100,000 or those procurements made, pursuant to subparagraph (c)(1)(iv) below, in value of not more than the maximum amount authorized pursuant to paragraph (1) of subdivision (i) of section 311 of the Charter. This collectively shall be known as the small purchase limit. Procurements over \$100,000 in value that are not made pursuant to subparagraph (c)(1)(iv) below, shall not be within the small purchase limit.

(b) Application. A procurement shall not be artificially divided in order to meet the requirements of this section. Changes to and/or renewals of small purchases shall not bring the total value of the procurement to an amount greater than the small purchase limit.

(c) Scope.

(1) Competition Objective.

(i) Public notice of solicitation and award, written decision to procure technical, consultant, or personal services, presolicitation review report, Recommendation for Award, vendor protests, written notice to the low bidder or offeror of non-responsiveness, VENDEX questionnaires (unless the total aggregate value of purchases, franchises, and concessions awarded to that vendor including this one during the immediately preceding twelve-month period equals or exceeds \$250,000) and public hearing (unless the award is valued over \$100,000) shall not be required for small purchases awarded, pursuant to this section. Notwithstanding any provision of this subparagraph, notice of award shall be made in accordance with paragraph (d)(2) for procurements made pursuant to subparagraph (c)(1)(iv) below.

(ii) Micropurchases. For procurements of goods and all services except construction the value of which is \$20,000 or less, and for procurements of construction the value of which is \$35,000 or less, no competition is required except that in making purchases below this limit, Contracting Officers must ensure that the noncompetitive price is reasonable and that purchases are distributed appropriately among responsible vendors, including M/WBE vendors. Documentation of such purchases must identify the vendor the item was purchased from, the item purchased, and the amount paid.

(iii) Small Purchases. Except for purchases made, pursuant to subparagraph (c)(1)(iv) below, for procurements of goods and all services except construction valued over \$20,000 through the small purchase limit or procurements of construction valued over \$35,000 through the small purchase limit, at least five vendors must be solicited at random from the appropriate citywide small purchases bidders list established by the CCPO for the particular goods, services, construction, or construction-related services being purchased, except where the bidders list consists of fewer than five vendors, in which case all vendors on the list must be solicited. Agencies may additionally employ any small purchase technique sanctioned by DSBS that is not otherwise in violation of these Rules. The agency may solicit additional vendors but only with the approval of the CCPO. Responsive bids or offers must be obtained from at least two vendors. For purposes of this section, a response of “no bid” is not a responsive bid. If only one responsive bid or offer is received in response to a solicitation, an award may be made to that vendor if the Contracting Officer determines that the price submitted is fair and reasonable and that other vendors had reasonable opportunity to respond.

(iv) M/WBE Noncompetitive Small Purchases. No competition is required for the procurement of goods, services, and construction from M/WBE vendors, except that in making purchases pursuant to this subparagraph, the Contracting Officer must attempt to obtain at least three price quotes from M/WBE vendors or document their inability to do so. The Contracting Officer must ensure that the noncompetitive price selected is reasonable and that purchases are distributed appropriately among responsible M/WBE vendors. Agencies shall not use this subparagraph to make any purchase for goods, services or construction, the value of which is less than or equal to the applicable micropurchase limits set in subparagraph (c)(1)(ii) above, or to make any purchase the value of which exceeds the maximum amount authorized pursuant to paragraph (1) of subdivision (i) of section 311 of the Charter. Additionally, agencies shall not make purchases pursuant to this subparagraph for human services.

(2) Solicitation Methods and Use. For purchases made, pursuant to subparagraph (c)(1)(iii) above, agencies must use a written solicitation describing the requirements, which must contain, at a minimum:

- (i) a description of the item or service requested;
- (ii) time, date, place, and form of requested response;
- (iii) basis for award; and
- (iv) name and telephone number of the Contracting Officer to whom inquiries may be directed.

(d) Award.

(1) Determination. Purchases made, pursuant to subparagraph (c)(1)(iii) above, shall be awarded to the lowest responsive and responsible bidder or to the responsive and

responsible offeror that has made the most advantageous offer. After such determination has been made and all necessary approvals have been obtained, the Contracting Officer must issue a purchase order or contract, as appropriate, to the successful bidder or offeror.

(2) Notice of Award.

(i) Frequency. Notice of award for procurements made pursuant to subparagraph (c)(1)(iv) 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 or brief description of the goods, services, or construction procured;
- (D) name and address of the vendor;
- (E) dollar value of the contract; and
- (F) procurement method by which the contract was let.

(e) Record. The procurement file for a small purchase shall include, at a minimum, any of the following that are applicable:

- (1) name of the responsible Contracting Officer;
- (2) date of contract award;
- (3) purchase order or contract number;
- (4) name and address of successful vendor, including the vendor's employer identification number;
- (5) invoice and receiving documentation;
- (6) description of goods, services, construction, and construction-related services;
- (7) name of the bidder list or applicable commodity code;
- (8) names of solicited vendors and bid amounts, if any;
- (9) copy of advertisement or written solicitation;
- (10) quotations and notations pertaining to oral bid solicitations;
- (11) written bids and offers;
- (12) all correspondence;
- (13) bid tabulations; and
- (14) written basis of award, including a determination that the award is fair and reasonable for small purchases made, pursuant to subparagraph (c)(1)(iv) above.

§ 6-116.2 [Reporting of contracted goods and services; computerized data base.]

a. The comptroller and the mayor shall jointly maintain, at the financial information services agency, a computerized data base. Such data base shall contain information for every franchise and concession and every contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, entered into by an agency, New York city affiliated agency, elected official or the council, including, but not limited to:

- (1) the name, address, and federal taxpayer's identification number of the contractor, franchisee or concessionaire where available in accordance with applicable law;
- (2) the dollar amount of each contract including original maximum and revised maximum expenditure authorized, current encumbrance and actual expenditures;
- (3) the type of goods or services to be provided pursuant to the contract;
- (4) the term of the contract, or in the case of a construction contract the starting and scheduled completion date of the contract and the date final payment is authorized;
- (5) the agency, New York city affiliated agency, elected official or the council that awarded the contract, franchise or concession and the contract registration number, if any, assigned by the comptroller;
- (6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure, and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder; and
- (7) the date of any public hearing held with respect to the contract and the date and agenda number of action taken with respect to a concession or franchise by the franchise and concession review committee; and
- (8) [Reserved.]
- (9) the contract budget category to which the contract is assigned, where applicable.

b. (i) The mayor and comptroller shall be responsible for the maintenance of a computerized data system which shall contain information for every contract, in the following manner: the mayor shall be responsible for operation of the system; the mayor and the comptroller shall be jointly responsible for all policy decisions relating to the system. In addition, the mayor and the comptroller shall jointly review the operation of the system to ensure that the information required by this subdivision is maintained in a form that will enable each of them, and agencies, New York city affiliated agencies, elected officials and the council, to utilize the information in the performance of their duties. This system shall have access to information stored on other computerized data systems maintained by agencies, which information shall collectively include, but not be limited to:

- (1) the current addresses and telephone numbers of:
 - A. the contractor's principal executive offices and the contractor's primary place of business in the New York city metropolitan area, if different,
 - B. the addresses of the three largest sites at which it is anticipated that work would occur in connection with the proposed contract, based on the number of persons to be employed at each site,
 - C. any other names under which the contractor has conducted business within the prior five years, and
 - D. the addresses and telephone numbers of all principal places of business and primary places of business in the New York city metropolitan area, if different, where the contractor has conducted business within the prior five years;
- (2) the Dun & Bradstreet number of the contractor, if any;
- (3) the taxpayer identification numbers, employer identification numbers or social security numbers of the contractor or the division or branch of the contractor which is actually entering into the contract;
- (4) the type of business entity of the contractor including, but not limited to, sole proprietorship, partnership, joint venture or corporation;
- (5) the date such business entity was formed, the state, county and country, if not within the United States, in which it was formed and the other counties within New York State in which a certificate of incorporation, certificate of doing business, or the equivalent, has been filed within the prior five years;
- (6) the principal owners and officers of the contractor, their dates of birth, taxpayer identification numbers, social security numbers and their current business addresses and telephone numbers;
- (7) the names, current business addresses and telephone numbers, taxpayer identification numbers and employer identification numbers of affiliates of the contractors;
- (8) the principal owners and officers of affiliates of the contractor and their current business addresses and telephone numbers;
- (9) the principal owners and officers of every subcontractor;
- (10) the type, amount and contract registration number of all other contracts awarded to the contractor, as reflected in the database maintained pursuant to subdivision a of this section;
- (11) the contract sanction history of the contractor for the prior five years, including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon the contractor's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;
- (12) the contract sanction history for the prior five years of affiliates of the contractor including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon such entity's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;
- (13) the name and telephone number of the chief contracting officer or other employee of the agency, elected official or the council responsible for supervision of those charged with day-to-day management of the contract;
- (14) judgments or injunctions obtained within the prior five years in any judicial actions or proceedings initiated by any agency, any elected official

or the council against the contractor with respect to a contract and any such judicial actions or proceedings that are pending;

(15) record of all sanctions imposed within the prior five years as a result of judicial or administrative disciplinary proceedings with respect to any professional licenses held by the contractor, or a principal owner or officer of the contractor;

(16) whether city of New York income tax returns, where required, have been filed for the past five years;

(17) outstanding tax warrants and unsatisfied tax liens, as reflected in the records of the city;

(18) information from public reports of the organized crime control bureau and the New York state organized crime task force which indicates involvement in criminal activity;

(19) criminal proceedings pending against the contractor and any principal owner or officer of such contractor;

(20) record of all criminal convictions of the contractor, any current principal owner or officer for any crime related to truthfulness or business conduct and for any other felony committed within the prior ten years, and of any former principal owner or officer, within the prior ten years, for any crime related to truthfulness or business conduct and for any other felony committed while he or she held such position or status;

(21) all pending bankruptcy proceedings and all bankruptcy proceedings initiated within the past seven years by or against the contractor and its affiliates; (22) whether the contractor has certified that it was not founded or established or is not operated in a manner to evade the application or defeat the purpose of this section and is not the successor, assignee or affiliate of an entity which is ineligible to bid or propose on contracts or against which a proceeding to determine eligibility to bid or propose on contracts is pending;

(23) the name and main business address of anyone who the contractor retained, employed or designated to influence the preparation of contract specifications or the solicitation or award of this contract.

(ii) When personnel from any agency, elected officials or their staff, or members of the council or council staff learn that the certification required by subparagraph twenty-two of paragraph (i) may not be truthful, the appropriate law enforcement official shall be immediately informed of such fact and the fact of such notification shall be reflected in the data base, except when confidentiality is requested by the law enforcement official.

(iii) Information required from a contractor consisting of a contractor's social security number shall be obtained by the agency, elected official or the council entering into a contract as part of the administration of the taxes administered by the commissioner of finance for the purpose of establishing the identification of persons affected by such taxes.

(iv) In the event that procurement of goods, services or construction must be made on an emergency basis, as provided for in section three hundred fifteen of the charter, on an accelerated basis as provided for in section three hundred twenty-six of the charter, or expedited action is required due to urgent circumstances, or in such other circumstances as may be determined by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement, where it is not feasible to submit the information required by subdivision b prior to contract award, the required information may be submitted after award of the contract. However, all of the information required by subdivision b herein shall be submitted no later than thirty days from the date of the award. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on or otherwise be awarded a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

(v) Where a contractor or subcontractor becomes obligated to submit information required by this subdivision by reason of having been awarded a contract or subcontract, the value of which, when aggregated with the value of all other contracts or subcontracts awarded to that contractor or subcontractor during the immediately preceding twelve-month period, is valued at \$250,000, or more, such information shall be submitted no later than thirty days after registration of the contract which resulted in the obligation to submit such information. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

(vi) For the calendar year commencing on January 1, 1992, subcontractors shall be required to provide the information required by subparagraph nine of paragraph i and on or after June 30, 1994, subcontractors shall be subject to paragraph i in its entirety.

(vii) This subdivision shall not apply to any New York city affiliated agency, except that such New York city affiliated agency shall report cautionary information and the name and telephone number of the employee responsible for responding to inquiries concerning such information.

c. The information maintained pursuant to subdivision b shall be made accessible to the computerized data system established pursuant to subdivision a of this section in a form or format agreed upon by the mayor and the comptroller. The information contained in these computerized data systems shall be made available to any other data retrieval system maintained by an agency, New York city affiliated agency, elected official or the council for the purpose of providing information regarding contracts, franchises and concessions awarded and the contractors, franchisees and concessionaires to which they were awarded. The information concerning the past performance of contractors that is contained in a computerized data base maintained pursuant to section 6-116.1 of this code for such purposes shall be made available to these data systems.

c-1. The information required to be provided by contractors or subcontractors pursuant to subdivision b of this section shall be submitted electronically in such form and manner as the mayor may determine. For good cause, the mayor may waive the requirement of electronic submission and permit such information to be submitted in another manner.

d. All of the information as required by subdivisions a and b contained in these computerized data bases shall be made available on-line in read-only form to personnel from any agency or New York city affiliated agency, elected officials, members of the council and council staff, and shall be made available to members of the public, in accordance with sections three hundred thirty four and one thousand sixty four of the charter and article six of the public officers law.

e. No contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, franchise or concession shall be let by an agency, elected official or the council, unless the contract manager or other person responsible for making the recommendation for award has certified that these computerized data bases and the information maintained pursuant to section 6-116.1 of this code have been examined. This shall be in addition to any certifications required by chapter thirteen of the charter, the rules of the procurement policy board, where applicable, or any rules of the council relating to procurement.

f. Not later than January thirtieth following the close of each fiscal year, the comptroller shall publish a summary report setting forth information derived from the data base maintained pursuant to subdivision a of this section and the following information for each franchise, concession or contract for goods or services having a value of more than ten thousand dollars or in the case of construction, having a value of more than fifteen thousand dollars, including, but not limited to:

- (1) the types and dollar amount of each contract, franchise or concession entered into during the previous fiscal year;
- (2) the registration number assigned by the comptroller, if any;
- (3) the agency, New York city affiliated agency, elected official or the council entering into the contract, franchise or concession;
- (4) the vendor entering into the contract, franchise or concession and the subcontractors engaged pursuant to each contract;

(5) the reason or reasons why the award of each such contract was deemed appropriate pursuant to subdivision a of section 312 of the charter, where applicable; and

(6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder. For franchises, this information shall also include whether the authorizing resolution of the council was complied with.

g. Nothing in this section shall be deemed to require the disclosure of information that is confidential or privileged or the disclosure of which would be contrary to law.

h. Except for submissions to elected officials or to the council, contractors or subcontractors may only be required to submit information required under subdivision b of this section to a single agency, and any such submission shall be applicable to all contracts or subcontracts or bids for contracts or subcontracts of that contractor or subcontractor with any agency. Any contractor or subcontractor that has submitted to any agency, elected official or the council, the information required to be provided in accordance with subdivision b of this section shall be required to update that information only at three-year intervals, and except as provided in paragraph iv or v of subdivision b, no contract or subcontract shall be awarded unless the contractor or subcontractor has certified that information previously submitted as to those requirements is correct as of the time of the award of the contract or subcontract. The contractor or subcontractor may only be required to submit such updated information to a single agency and such submission shall be applicable to all contracts or subcontracts or bids for contracts or subcontracts of that contractor or subcontractor with any agency. The procurement policy board may, by rule, provide for exceptions to this subdivision.

i. Except as otherwise provided, for the purposes of subdivision b of this section,

(1) "affiliate" shall mean an entity in which the parent of the contractor owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the contractor also owns more than fifty per cent of the voting stock;

(2) "cautionary information" shall mean, in regard to a contractor, any adverse action by any New York city affiliated agency, including but not limited to poor performance evaluation, default, non-responsibility determination, debarment, suspension, withdrawal of prequalified status, or denial of prequalified status;

(3) "contract" shall mean and include any agreement between an agency, New York city affiliated agency, elected official or the council and a contractor, or any agreement between such a contractor and a subcontractor, which (a) is for the provision of goods, services or construction and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at \$250,000 or more; or (b) is for the provision of goods, services or construction, is awarded to a sole source and is valued at \$10,000 or more; or (c) is a concession and has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at \$100,000 or more; or (d) is a franchise. However, the amount provided for in clause a herein may be varied by rule of the procurement policy board, where applicable, or rule of the council relating to procurement, or, for franchises and concessions, rule of the franchise and concession review committee, as that amount applies to the information required by paragraphs 7, 8, 9 and 12 of subdivision b of this section, and the procurement policy board, where applicable, or the council, or, for franchises and concessions, the franchise and concession review committee, may by rule define specifically identified and limited circumstances in which contractors may be exempt from the requirement to submit information otherwise required by subdivision b of this section, but the rulemaking procedure required by chapter forty-five of the charter may not be initiated for such rule of the procurement policy board or franchise and concession review committee less than forty-five days after the submission by the procurement policy board or, for franchises and concessions, the franchise and concession review committee, to the council of a report stating the intention to promulgate such rule, the proposed text of such rule and the reasons therefor;

(4) "contractor" shall mean and include all individuals, sole proprietorships, partnerships, joint ventures or corporations who enter into a contract, as defined in paragraph three herein, with an agency, New York city affiliated agency, elected official or the council;

(5) "officer" shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known;

(6) "New York city affiliated agency" shall mean any entity the expenses of which are paid in whole or in part from the city treasury and the majority of the members of whose board are city officials or are appointed directly or indirectly by city officials, but shall not include any entity established under the New York city charter, this code or by executive order, any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility;

(7) "parent" shall mean an individual, partnership, joint venture or corporation which owns more than fifty percent of the voting stock of a contractor;

(8) "principal owner" shall mean an individual, partnership, joint venture or corporation which holds a ten percent or greater ownership interest in a contractor or subcontractor;

(9) "subcontract" shall mean any contract, as defined in paragraph three herein, between a subcontractor and a contractor; and

(10) "subcontractor" shall mean an individual, sole proprietorship, partnership, joint venture or corporation which is engaged by a contractor pursuant to a contract, as defined in paragraph three herein.

j. Notwithstanding any other provisions of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be submitted in a form or format and on a schedule to be determined by the mayor and the comptroller. In no event shall New York city affiliated agencies be required to submit such information prior to the award of any contract.

k. Notwithstanding any other provision of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be required only as to contracts funded in whole or in part with city funds, although nothing shall preclude New York city affiliated agencies from submitting information on contracts funded by other than city funds.

(Am. L.L. 2017/072, 5/10/2017, eff. 1/1/2018; Am. L.L. 2017/074, 5/10/2017, eff. 1/1/2018)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 1987/052, L.L. 1992/044 and L.L. 1992/049.

NY CLS N-PCL § 102

Current through 2024 released Chapters 1-59, 61-117

New York Consolidated Laws Service > Not-For-Profit Corporation Law (Arts. 1 — 16) > Article 1 Short Title; Definitions; Application; Certificates; Miscellaneous (§§ 101 — 115)

§ 102. Definitions

- (a) As used in this chapter, unless the context otherwise requires, the term:
- (1) “Bonds” includes secured and unsecured bonds, debentures, and notes.
 - (2) “By-laws” means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.
 - (3) “Certificate of incorporation” includes (A) the original certificate of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, as amended, supplemented or restated by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute; or (B) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated.
 - (3-a) “Charitable corporation” means any corporation formed, or for the purposes of this chapter, deemed to be formed, for charitable purposes.
 - (3-b) “Charitable purposes” of a corporation means one or more of the following purposes: charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.
 - (4) “Conducting of activities” of a corporation means the operations for the conduct of which such corporation is formed and may constitute “doing of business” or “transaction of business” as those terms are used in the statutes of this state.
 - (5) “Corporation” or “domestic corporation” means a corporation (1) formed under this chapter, or existing on its effective date and theretofore formed under any other general statute or by any special act of this state, exclusively for a purpose or purposes, not for pecuniary profit or financial gain, for which a corporation may be formed under this chapter, and (2) no part of the assets, income or profit of which is distributable to, or enures to the benefit of, its members, directors or officers except to the extent permitted under this statute.
 - (6) “Director” means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term “board” means “board of directors” or any other body constituting a “governing board” as defined in this section.
 - (6-a) “Entire board” means the total number of directors entitled to vote which the corporation would have if there were no vacancies. If the by-laws of the corporation provide that the board shall consist of a fixed number of directors, then the “entire board” shall consist of that number of directors. If the by-laws of any corporation provide that the board may consist of a range between a minimum and maximum number of directors, and the number within that range has not been fixed in accordance with paragraph (a) of section seven hundred two of this chapter, then the “entire board” shall consist of the number of directors within such range that were elected or appointed as of the most recently held election of directors, as well as any directors whose terms have not yet expired.
 - (7) “Foreign corporation” means a corporation formed under laws other than the statutes of this state, which, if formed under the statutes of this state, would be within the term “corporation or domestic corporation” as herein defined. “Authorized”, when used with respect to a foreign corporation, means

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having authority under Article 13 (Foreign Corporations) to conduct activities of the corporation in this state.

(7-a) “Infant” or “minor” means any person who has not attained the age of eighteen years.

(8) “Insolvent” means being unable to pay debts as they become due in the usual course of the debtor’s business.

(9) “Member” means one having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or by-laws.

(9-a) “Non-charitable corporation” means any corporation formed under this chapter, other than a charitable corporation, including but not limited to one formed for any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, or animal husbandry, or for the purpose of operating a professional, commercial, industrial, trade or service association.

(10) “Not-for-profit corporation” means a corporation as defined in subparagraph (5).

(11) “Office of a corporation” means the office the location of which is stated in the certificate of incorporation of a domestic corporation, or in the application for authority of a foreign corporation or an amendment thereof. Such office need not be a place where activities are conducted by such corporation.

(12) “Process” means judicial process and all orders, demands, notices or other papers required or permitted by law to be personally served on a domestic or foreign corporation, for the purpose of acquiring jurisdiction of such corporation in any action or proceeding, civil or criminal, whether judicial, administrative, arbitrate or otherwise, in this state or in the federal courts sitting in or for this state.

(13) [Repealed]

(14) [Repealed]

(15) “Governing board” means the body responsible for the management of a corporation or of an institutional fund.

(16) “Historic dollar value” means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the corporation is conclusive.

(17) [Repealed]

(18) “Authorized person” means a person, whether or not a member, officer, or director, who is authorized to act on behalf of a corporation or foreign corporation.

(19) An “affiliate” of a corporation means any entity controlled by, or in control of, such corporation.

(20) “Independent auditor” means any certified public accountant performing the audit of the financial statements of a corporation required by subdivision one of section one hundred seventy-two-b of the executive law.

(21) “Independent director” means a director who: (i) is not, and has not been within the last three years, an employee or a key person of the corporation or an affiliate of the corporation, and does not have a relative who is, or has been within the last three years, a key person of the corporation or an affiliate of the corporation; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the corporation or an affiliate of the corporation; (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has provided payments, property or services to, or received payments, property or services from, the corporation or an affiliate of the corporation if the

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amount paid by the corporation to the entity or received by the corporation from the entity for such property or services, in any of the last three fiscal years, exceeded the lesser of ten thousand dollars or two percent of such entity's consolidated gross revenues if the entity's consolidated gross revenue was less than five hundred thousand dollars; twenty-five thousand dollars if the entity's consolidated gross revenue was five hundred thousand dollars or more but less than ten million dollars; one hundred thousand dollars if the entity's consolidated gross revenue was ten million dollars or more; or (iv) is not and does not have a relative who is a current owner, whether wholly or partially, director, officer or employee of the corporation's outside auditor or who has worked on the corporation's audit at any time during the past three years. For purposes of this subparagraph, the terms: "compensation" does not include reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director as permitted by paragraph (a) of section 202 (General and special powers) of this chapter; and "payment" does not include charitable contributions, dues or fees paid to the corporation for services which the corporation performs as part of its nonprofit purposes, or payments made by the corporation at fixed or non-negotiable rates or amounts for services received, provided that such services by and to the corporation are available to individual members of the public on the same terms, and such services received by the corporation are not available from another source.

(22) "Relative" of an individual means (i) his or her spouse or domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law; (ii) his or her ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren; or (iii) the spouse or domestic partner of his or her brothers, sisters, children, grandchildren, and great-grandchildren.

(23) "Related party" means (i) any director, officer or key person of the corporation or any affiliate of the corporation; (ii) any relative of any individual described in clause (i) of this subparagraph; or (iii) any entity in which any individual described in clauses (i) and (ii) of this subparagraph has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

(24) "Related party transaction" means any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the corporation or any affiliate of the corporation is a participant, except that a transaction shall not be a related party transaction if: (i) the transaction or the related party's financial interest in the transaction is de minimis, (ii) the transaction would not customarily be reviewed by the board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms, or (iii) the transaction constitutes a benefit provided to a related party solely as a member of a class of the beneficiaries that the corporation intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.

(25) "Key person" means any person, other than a director or officer, whether or not an employee of the corporation, who (i) has responsibilities, or exercises powers or influence over the corporation as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages the corporation, or a segment of the corporation that represents a substantial portion of the activities, assets, income or expenses of the corporation; or (iii) alone or with others controls or determines a substantial portion of the corporation's capital expenditures or operating budget.

History

Add, L 1969, ch 1066, § 1; amd, L 1970, ch 847, § 2, eff Sept 1, 1970; L 1974, ch 901, § 1, eff Sept 1, 1974; L 1978, ch 690, § 1, eff July 25, 1978; L 1998, ch 375, § 30, eff Aug 13, 1998; L 2005, ch 726, § 1, eff April 9, 2006; L 2006, ch 434, § 1, eff July 26, 2006; L 2010, ch 490, § 2, eff Sept 17, 2010; L 2013, ch 549, § 29, eff July 1, 2014; L 2014, ch 23, § 2, eff July 1, 2014; L 2015, ch 555, § 1, effective December 11, 2015; L 2016, ch 466, § 1, effective May 27, 2017.

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NY CLS N-PCL § 715

Current through 2024 released Chapters 1-59, 61-117

New York Consolidated Laws Service > Not-For-Profit Corporation Law (Arts. 1 — 16) > Article 7 Directors and Officers (§§ 701 — 727)

§ 715. Related party transactions

(a) No corporation shall enter into any related party transaction unless the transaction is determined by the board, or an authorized committee thereof, to be fair, reasonable and in the corporation's best interest at the time of such determination. Any director, officer or key person who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest.

(b) With respect to any related party transaction involving a charitable corporation and in which a related party has a substantial financial interest, the board of such corporation, or an authorized committee thereof, shall:

(1) Prior to entering into the transaction, consider alternative transactions to the extent available;

(2) Approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and

(3) Contemporaneously document in writing the basis for the board or authorized committee's approval, including its consideration of any alternative transactions.

(c) The certificate of incorporation, by-laws or any policy adopted by the board may contain additional restrictions on related party transactions and additional procedures necessary for the review and approval of such transactions, or provide that any transaction in violation of such restrictions shall be void or voidable.

(d) Unless otherwise provided in the certificate of incorporation or the by-laws, the board shall have authority to fix the compensation of directors for services in any capacity.

(e) The fixing of compensation of officers, if not done in or pursuant to the by-laws, shall require the affirmative vote of a majority of the entire board unless a higher proportion is set by the certificate of incorporation or by-laws.

(f) The attorney general may bring an action to enjoin, void or rescind any related party transaction or proposed related party transaction that violates any provision of this chapter or was otherwise not reasonable or in the best interests of the corporation at the time the transaction was approved, or to seek restitution, and the removal of directors or officers, or seek to require any person or entity to:

(1) Account for any profits made from such transaction, and pay them to the corporation;

(2) Pay the corporation the value of the use of any of its property or other assets used in such transaction;

(3) Return or replace any property or other assets lost to the corporation as a result of such transaction, together with any income or appreciation lost to the corporation by reason of such transaction, or account for any proceeds of sale of such property, and pay the proceeds to the corporation together with interest at the legal rate; and

(4) Pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained.

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- (g)** The powers of the attorney general provided in this section are in addition to all other powers the attorney general may have under this chapter or any other law.
- (h)** No related party may participate in deliberations or voting relating to a related party transaction in which he or she has an interest; provided that nothing in this section shall prohibit the board or authorized committee from requesting that a related party present information as background or answer questions concerning a related party transaction at a board or committee meeting prior to the commencement of deliberations or voting relating thereto.
- (i)** In an action by any person or entity other than the attorney general, it shall be a defense to a claim of violation of any provisions of this section that a transaction was fair, reasonable and in the corporation's best interest at the time the corporation approved the transaction.
- (j)** In an action by the attorney general with respect to a related party transaction not approved in accordance with paragraphs (a) or (b) of this section at the time it was entered into, whichever is applicable, it shall be a defense to a claim of violation of any provisions of this section that (1) the transaction was fair, reasonable and in the corporation's best interest at the time the corporation approved the transaction and (2) prior to receipt of any request for information by the attorney general regarding the transaction, the board has: (A) ratified the transaction by finding in good faith that it was fair, reasonable and in the corporation's best interest at the time the corporation approved the transaction; and, with respect to any related party transaction involving a charitable corporation and in which a related party has a substantial financial interest, considered alternative transactions to the extent available, approving the transaction by not less than a majority vote of the directors or committee members present at the meeting; (B) documented in writing the nature of the violation and the basis for the board's or committee's ratification of the transaction; and (C) put into place procedures to ensure that the corporation complies with paragraphs (a) and (b) of this section as to related party transactions in the future.

History

Add, L 1969, ch 1066, § 1; amd, L 1970, ch 847, § 48, eff Sept 1, 1970; L 1971, ch 1057, § 7, eff July 2, 1971; L 2013, ch 549, § 74, eff July 1, 2014; L 2015, ch 555, § 7, effective December 11, 2015; L 2016, ch 466, § 7, effective May 27, 2017.

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Matter of New York & Presbyt. Hosp. v City of New York Mayor's Off. of Contract Servs.

Supreme Court of New York, New York County

April 19, 2013, Decided

100667/12

Reporter

39 Misc. 3d 1214(A) *; 971 N.Y.S.2d 72 **; 2013 N.Y. Misc. LEXIS 1588 ***; 2013 NY Slip Op 50611(U) ****; 2013 WL 1715362

[****1] In the Matter of the Application of The New York and Presbyterian Hospital, Petitioner, For a Judgment Pursuant to CPLR Article 78, against City of New York Mayor's Office of Contract Services and MARLA G. SIMPSON, as Director of the Mayor's Office of Contract Services, Respondents.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

PUBLISHED IN TABLE FORMAT IN THE NEW YORK SUPPLEMENT.

Prior History: Matter of New York & Presbyt. Hosp. v. city of N.Y. Mayor's Off. of Contr. Servs., 2013 N.Y. Misc. LEXIS 1685 (N.Y. Sup. Ct., Apr. 19, 2013)

Counsel: [***1] For Plaintiff: Epstein Becker & Green, P.C., New York, New York.

For Defendants: Corporation Counsel, New York, New York.

Judges: Doris Ling-Cohan, J.

Opinion by: Doris Ling-Cohan

Opinion

Doris Ling-Cohan, J.

Background

Petitioner The New York and Presbyterian Hospital (the Hospital) brings this Article 78 proceeding against respondents City of New York Mayor's Office of Contract Services (MOCS) and Marla G. Simpson (Simpson) for an order and judgment: 1) declaring the

inclusion of the Caution Notification concerning the Hospital in the Caution File of the Vendor Information Exchange System (VENDEX) system an abuse of discretion, contrary to law, without rational basis, and "arbitrary and capricious"; and 2) ordering respondents to remove the Caution Notification from the Caution File of the VENDEX system and place a curative statement in the system stating that the Caution Notification was erroneous. [****2]

As explained further below, the VENDEX system is a database maintained by the City to provide information regarding prospective vendors pursuing City contracts. The information contained therein may affect a vendor's ability to be awarded a City contract.

The Hospital alleges that, on October 6, 2011, respondents posted [***2] a Caution Notification based solely on a press release issued by the office of the United States Attorney for the Southern District of New York relating to the settlement of a previously sealed federal False Claims Act lawsuit. *United States ex rel Nicolli Reynolds v Dr. Erik Goluboff*, 05 Civ 9804 (LSB) (*Reynolds* litigation). That Caution Notification stated in pertinent part:

On October 5, 2011, the U.S. Attorney's Office for the Southern District of New York filed and simultaneously settled a civil health care fraud lawsuit against The Trustees of Columbia University in the City of New York ("Columbia"), New York Presbyterian Hospital ("Presbyterian Hospital"), and Dr. Erik Goluboff. The settlement requires Columbia to pay \$995,000 in civil damages to the federal government under the False Claims Act. The Complaint alleges that between 2003 and 2009, Dr. Goluboff violated Medicare regulations by conducting diagnostic tests that were medically unnecessary, billing Medicare for those tests in such a way as to generate improper and excessive reimbursement amounts, and billing Medicare for more procedures than he was physically able to perform in a single day. The Complaint also alleges

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[**3] that Columbia and Presbyterian Hospital were aware of Dr. Goluboff's fraudulent practices, failed to stop these practices, and caused his claims to be submitted to Medicare. Columbia and Presbyterian Hospital thus continued to benefit financially from the fraud and did not stop it, even after learning of what Columbia described internally as "alarming compliance issues" with Dr. Goluboff.

Petition, ¶ 35.

The whistleblower litigation was initially filed in 2005 by an employee of the Hospital, Nicoli Reynolds. Reynolds alleged that Dr. Goluboff, who was employed by Columbia and had admitting privileges at the Hospital, was engaged in fraudulent Medicare billing. The United States entered the litigation in October 2011, simultaneously filing its complaint-in-intervention and settlement agreement, in which the United States agreed to seek dismissal with prejudice of both Reynold's *Qui Tam* complaint and its own complaint. The Stipulation and Order of Settlement and Dismissal of the action was signed by the court on October 4, 2011.

The Hospital contends that the City posted the notification without advising the Hospital in advance or providing the Hospital with the opportunity to comment on [**4] the caution notification. According to the Hospital, had the City inspected the Stipulation and Order settling the case, which was publicly available on-line, it would have learned the following details of the settlement:

a. "[T]his stipulation is [not] an admission of liability by Defendants..." (2nd recital, p. 3);

b. That payment of the entire \$995,000 was to be made by Columbia; that no payment of any kind was to be made by the Hospital (par. 2); and

[***3]

c. "[I]rrespective of what is alleged in the First Amended *Qui Tam* Complaint, Relator [Reynolds] warrants that, as of the date of this agreement, she has no knowledge of any violations of law or other misconduct on the part of the Hospital, its officers, trustees, employees, agents, or assigns." (Par 7.)

Petition, ¶ 36.

The Verified Petition alleges that the Hospital was not involved in, did not participate in, and did not benefit from the fraudulent billing. The Petition further alleges

that the Hospital was not even aware that it had been named as a party defendant by Reynolds and did not learn of the litigation, which was initiated by Reynolds in 2005, until August 2011, when the General Counsel of Columbia contacted the Hospital to [***5] advise it that an action was about to be unsealed and settled by the U.S. Attorney's office, and that all of the parties wanted a global settlement. The Hospital was told that Reynolds wanted to include the Hospital as a signatory to the settlement to provide her assurance that her employment status at the Hospital would not be jeopardized for having brought the False Claims action.

The Petition further alleges that at no time prior to the settlement discussions did the U.S. Attorney contact the Hospital in connection with the litigation, nor did the U.S. Attorney seek financial payment, equitable relief or attorneys' fees from the Hospital.

The Hospital contends that the City's actions in posting the VENDEX notification, based solely on a federal press release and refusing to remove it, were arbitrary, capricious and an abuse of discretion.

Apparently on October 6, the day that the Caution Notification was posted, respondents wrote to the Hospital, notifying the Hospital of the posting, including the contents of the posting, and indicating that "Any questions concerning this entry may be addressed to this office in writing." Petition, Exh. A, at 2. Five days later, on October 11, 2011, [***6] counsel for the Hospital wrote to respondent Simpson stating, among other things, that the settlement agreement of the *Qui Tam* action demonstrated that the Hospital was not involved in the fraudulent billing and that the Hospital was not required to make any payment to the federal government. The Hospital further indicated that its only prior involvement in the matter was to provide the federal government with certain patient records, and that "the sole reason for the inclusion of [the Hospital] in the settlement was to provide assurance to the Relator that her employment status at the Hospital would not be jeopardized because she had filed suit and was obtaining a recovery from Columbia." Letter from Stuart M. Gerson to Marla Simpson, dated October 11, 2011, at 2. The letter further indicated that, as part of the settlement agreement, the plaintiff Reynolds (Relator) stated, "irrespective of what is alleged in the ... Complaint, Relator warrants that, as of the date of this agreement, she has no knowledge of any violations of law or other misconduct on the part of the Hospital, its officers, trustees, employees, agents or assigns." *Id.* Counsel stated that the Caution Notification [***7] would

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result in "pecuniary and reputational harm" to the Hospital and requested that it be removed from VENDEX immediately. *Id.*

A similar, though more abbreviated, letter was sent to the Corporation Counsel for the City of New York. Both letters annexed copies of the U.S. Attorney's press release and the Settlement Agreement.

Presumably in response to the Hospital's letters to the City and to the Corporation [****4] Counsel, certain language in the VENDEX notification was changed twice, including removing the allegation that "Presbyterian Hospital thus continued to benefit financially from the fraud." In addition, the U.S. Attorney's press release was removed from the VENDEX file and was replaced by the Intervenor Complaint and the stipulation terminating the litigation.

Following the filing of the petition in this proceeding, on January 24, 2012, the notification was again changed to state that though "the settlement requires Columbia to pay \$995,000 for the loss claimed by the United States, it did not require any payment by NY Presbyterian." Affirmation of Lawrence Kahn, Exh. F. By making these changes in the VENDEX notification, the City contends that the notification is now entirely truthful [***8] and balanced (Respondents' Brief at 14), and meets the purpose of the VENDEX system to give contracting officers an opportunity to explore the truth of the allegations in the federal Complaint-in-Intervention.

The Hospital contends that, the changes that have been made in the VENDEX notification notwithstanding, it is arbitrary and capricious and without rational basis for the City to maintain the notification based solely on unproven allegations in a case which has been settled, and where there is no evidence that the Hospital committed Medicaid fraud and the original relator states that "she has no knowledge of any violations of law or other misconduct on the part of the Hospital, its officers, trustees, employees, agents, or assigns." Stipulation and Order of Settlement and Dismissal, ¶ 7. The City argues, however, that the stipulation contains no such statement by the United States government.

Discussion

Pursuant to section 103 of the General Municipal Law, "all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded ... to the lowest

responsible [***9] bidder." Under New York City regulations, governing vendor responsibility, "[f]actors affecting a contractor's responsibility may include ... a satisfactory record of business integrity." NY City Procurement Policy Board Rules, 9 RCNY § 2-08 (b) (2) (vi).

VENDEX is an automated data base maintained by the City to provide background information regarding prospective vendors seeking City contracts and to assist contracting officers in determining whether those prospective bidders are "responsible" and, among other things, have "a satisfactory record of business integrity." New York City Procurement Policy Board Rules, 9 RCNY § 2-08 (b) (2) (vi). Among the types of information that shall be included in the computerized system concerning the contractor are the contract sanction history of the contractor, criminal proceedings and records of criminal convictions against the contractor, pending bankruptcy proceedings (see Administrative Code of City of NY § 6-116.2 [b] [i] [11], [19], [20] and [21]) and "judgments or injunctions obtained within the prior five years in any judicial actions or proceedings initiated by any agency, any elected official or the council against the contractor with respect [***10] to a contract and any such judicial actions or proceedings that are pending." Administrative Code § 6-116.2 (b) (i) (14).

"It is well settled that a court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion." *Matter of Pell v Board of Educ. Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 232, 313 N.E.2d 321, 356 N.Y.S.2d 833 (1974)(emphasis in [****5] original; citation omitted).

The Hospital cites, among other cases, *Matter of Brown v Goord* (19 AD3d 773, 796 N.Y.S.2d 439 [3d Dept 2005]) and *Anonymous v Bureau of Professional Med. Conduct* (309 AD2d 44, 764 N.Y.S.2d 247 [1st Dept 2003], *aff'd* 2 NY3d 663, 814 N.E.2d 440, 781 N.Y.S.2d 270 [2004]) in support of its argument that there is no rational basis for the City to post a VENDEX Notification based upon unproven and withdrawn allegations against it. In *Brown*, the Court ordered the Department of Corrections to expunge from the petitioner's guidance file references to him as a sex offender or that he committed certain sex crimes with which he was charged but not convicted. In *Anonymous*, the Court ruled that the State Board for Professional Medical Conduct must keep confidential [***11] unsustainable

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charges against a doctor. The City contends that both of those cases are distinguishable because, in the respective cases, a criminal trial or administrative hearing were respectively held, resulting in the conclusions that the relevant charges were not sustained, whereas here, no hearing was held.

Despite those differences, this court concludes that the decisions in both *Brown* and *Anonymous* provide relevant guidance here. Here, the City is maintaining information concerning the Hospital in a publicly available data base purportedly to advise city agencies about whether the hospital is "responsible" based, not upon any criminal proceedings, convictions, bankruptcy filings, civil judgments obtained, or even civil proceedings pending against the hospital. Rather, the City is basing the VENDEX notification upon allegations in a complaint filed against the Hospital that was settled with no admission of wrongdoing by, or penalty to, the Hospital, and which the United States agreed to dismiss with prejudice. In fact, the plaintiff in such suit, (the Relator), withdrew the allegations in the complaint as it applied to the hospital by specifically stating "[I]rrespective of what [***12] is alleged in the First Amended *Qui Tam* Complaint, Relator [Reynolds] warrants that, as of the date of this agreement, she has no knowledge of any violations of law or other misconduct on the part of the Hospital, its officers, trustees, employees, agents, or assigns." Petition, Exh. C, Stipulation and Order of Settlement and Dismissal, ¶ 7.

Citing the Affirmation of Chief Litigating Assistant Corporation Counsel Lawrence S. Kahn, the City contends that beyond the raw allegations themselves, the Assistant United States Attorney responsible for the case elaborated to the Office of the Corporation Counsel thereafter that the allegations against the Hospital asserted in that Federal complaint were based on the Federal Government's own investigation of the matter. Kahn Aff. at ¶ 12.

Respondents' Memorandum of Law in Support of Their Answer, at 14. If Assistant U.S. Attorney Phillips (AUSA Phillips) in fact "elaborated" the basis for the allegations against the Hospital to the Corporation Counsel, that elaboration is not reflected in the Kahn affidavit. Rather, the Kahn affirmation merely states that

I asked Ms. Phillips if she could advise me of the specific evidence which supported the allegations [***13] in the United States' Complaint-in-Intervention. AUSA Phillips advised me, after consulting with her supervisor, that she was not at

liberty to disclose the evidence supporting the allegations in the United States' Complaint but that she could say that the allegations about New York [***6] Presbyterian — asserted in the very recent Complaint-in-Intervention dated September 30, 2011 — were based on the investigation that the United States had conducted.

Kahn Affirmation, ¶ 12. Nor is an Affirmation or Affidavit submitted from AUSA Phillips.

Thus, the City is effectively justifying its decision to post a VENDEX notification concerning allegations made, and dismissed with prejudice, by the United States government against the Hospital, based upon a vague general hearsay statement of an Assistant U.S. Attorney which contains no specific allegations of wrongdoing against the Hospital. The City contends that it is posting the information so that City contracting officers can be "aware of [***14] allegations raised in a false claims action by the United States Government so that the allegations can be considered and explored by contracting officers who may later be charged with assessing the Hospital's responsibility." Respondents' Memorandum of Law, at 22. However, in light of AUSA Phillips' apparent unwillingness to provide any substantive information to the Corporation Counsel's office, it is highly unlikely that City contracting officers, with even less authority than the Corporation Counsel, will be able to obtain any meaningful information from the U.S. Attorney's office regarding the Hospital's alleged responsibility for the wrongdoing alleged in the federal complaint. The Hospital, therefore, could be forced to carry the burden of disproving allegations against it which have already been withdrawn with prejudice by the federal government.

The court concludes that to maintain the posted notification against the Hospital on this basis is arbitrary and unreasonable.¹

Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition is granted to the extent that respondents City of New York Mayor's Office of Contract Services and Marla G. Simpson are directed to remove from the Caution File in the VENDEX system the notification concerning petitioner The New

¹ As there is no indication that the Hospital has experienced any adverse effect from the posting to date, the court concludes that it is not necessary to require the City to post a curative statement in the [***15] system indicating that the Caution Notification was erroneous.

39 Misc. 3d 1214(A), *1214(A); 971 N.Y.S.2d 72, **72; 2013 N.Y. Misc. LEXIS 1588, ***15; 2013 NY Slip Op 50611(U), ****6

York and Presbyterian Hospital in connection with the litigation entitled *United States ex rel Reynolds v Goluboff*, 05 Civ 9804 (LSB).

Dated:

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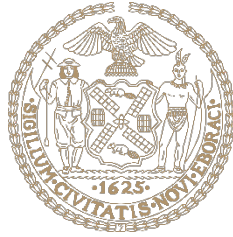
NEW YORK CITY COMPTROLLER
BRAD LANDER

Contract Primer

BUREAU OF CONTRACTS ADMINISTRATION

Fall 2023





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How to Navigate This Document

Welcome to our primer on NYC contracting. This is our effort under Comptroller Lander's Administration to provide the public with a straightforward guide to the basics of the City's contracting workflows, and essential solicitation methods.

Readers are invited to review this Primer in its entirety or to jump around as needed to refresh around particular topics. This document is divided into three overarching sections:

1. Primer – This section contains information on NYC contracting including, but not limited to:
 - a. Key entities in NYC Contracting
 - b. Overview of the NYC Contracting Cycle
 - c. Definitions of core contract categories and solicitation methods
 - d. Details about additional contracting processes such as Real Property Transactions, Contract Modifications, Purchase Orders, and Task Orders
2. Public Resources – This section contains descriptions of essential public-facing resources for monitoring New York City contracting and spending trends.
3. Appendices – Contains helpful tables for navigating this Primer and running searches in the systems outlined in section II.

I. NYC Contracting: A Primer

This Primer provides a general overview of City contracting processes and solicitation methods. Understanding the frameworks behind why and how the City enters new contracts, as well as what happens during the term of a contract, can be helpful context when examining individual records as well as citywide trends.

Key Entities in City Contracting

Below are several entities that play a role in the City's contract process at various, and in some instances multiple stages. This list is not intended to be an exhaustive accounting of every contracting agency or oversight body, but rather a preview of individuals and entities that are often referenced in this Primer.

Procurement Policy Board (PPB)

The PPB is the governing entity that is responsible for the promulgation of the City's procurement rules. These rules inform the City's procurement activities, including how the City solicits bids and proposals from vendors and how contracts are awarded. The PPB consists of five members, three of who are appointed by the mayor, and two of whom are appointed by the Comptroller. Besides making the rules that govern the City's contracting process, the PPB has no authority with respect to the award or administration of any particular contract.

Franchise and Concession Review Committee (FCRC)

The FCRC is responsible for approving certain Franchise and Concession selections made by City agencies. The FCRC is comprised of the Mayor and a mayoral appointee, the Director of the Office of Management and Budget, the City's Corporation Counsel, Borough Presidents, and the Comptroller. Each member of the FCRC holds one vote, except for the Borough Presidents, who share one vote. Concessions are subject to [Title 12 of the Rules of the City of New York](#).

Office of the Mayor

The Mayor's Office is responsible for managing the City's procurement functions, including those relating to organization, personnel and structure. The Charter affords the Mayor with powers to approve the use of alternative procurement procedures, allow agencies to procure contracts by methods other than competitive sealed bidding, and maintain information

regarding City contracts and contractors in a manner that is reasonably available for public inspection.¹

City Chief Procurement Officer (CCPO)

The City Chief Procurement Officer is also the Director of the Mayor’s Office of Contract Services (MOCS). In this role, the CCPO exercises Mayoral procurement process powers, including those granted by the Charter, the Administrative Code, and the PPB Rules. Pursuant to Executive Order 121 (2008), the CCPO has been delegated powers under the Mayor’s Office to establish procurement procedures, lead public hearings, and manage various contracting plans. The CCPO is responsible for the coordination and oversight of procurement activity for all Mayoral agency staff, including all Agency Chief Contracting Officers. Specifically, this oversight entails ensuring agency compliance with applicable rules, laws, and procedures so that certifications of procedural requisites are completed timely and accurately.

The Mayor’s Office of Minority and Women-Owned Business Enterprises (OMWBE)

OMWBE was created to address historic disparities in city contracting and provide minority and women entrepreneurs (M/WBEs) increased opportunities to do business with New York City. The office is responsible for developing policy, enhancing coordination among city agencies, and providing oversight and accountability of the city’s M/WBE program. OMWBE coordinates with mayoral agencies to increase utilization of M/WBEs in city contracting, and to hold agencies accountable to M/WBE participation goals. The office also provides direct support to M/WBE vendors seeking to work with the City.

Chief Business Diversity Officer

The Chief Business Diversity Officer of OMWBE was established in 2023 to support and elevate the City’s M/WBEs by making the City a more equitable and inclusive business environment. Pursuant to Executive Order 26 (2023), the Chief Business Diversity Officer, in consultation with MOCS and the New York City Department of Small Business Services (SBS), shall periodically review agency procurement data provided by MOCS and relevant research to (a) determine any changes in the ethnic or gender categories of M/WBEs to be classified as underutilized, (b) to identify meaningful progress towards addressing overall disparities in procurement across the City, and (c) to make any necessary adjustments to city policies based on such review.

¹ NYC Charter §322, §327, and §334

The Mayor’s Office of Non-Profit Services (MONS)

MONS was established in 2022 to advance recommendations developed by the [Joint Taskforce to Get Non-Profits Paid on Time](#). The mission of MONS is to promote thriving communities and the delivery of essential services across the City by amplifying and addressing the needs of non-profit organizations. It also leads efforts to coordinate between city agencies and non-profit leaders to center equity, inform City policy, and reduce barriers for non-profits to contract with the City.

Agency Chief Contracting Officer (ACCO)

Each contracting agency has an ACCO that is responsible for overseeing procurement functions on behalf of their agency, in conjunction with the CCPO. ACCO functions include, but are not limited to: developing solicitation materials; ensuring the selection of appropriate procurement methods; ensuring the integrity of the vendor selection process; vetting vendor backgrounds and making affirmative determinations of responsibility; and ensuring that vendor performance is evaluated throughout the life of a contract. ACCOs also advise agency staff on matters pertaining to procurement matters, Local Laws, and administrative requirements. ACCOs additionally serve as liaisons to MOCS. ACCOs are encouraged to collaborate with agency M/WBE Officers to ensure the success of their agency’s M/WBE goals.

M/WBE Officer

Section 6-129 of the Administrative Code mandates that agency M/WBE officers be either a deputy commissioner or other executive officer designated by the agency head. The M/WBE officer must report directly to the agency head on M/WBE activities carried out by the agency, including, but not limited to, general compliance, intra-agency coordination, and overseeing procurement participation goals.

Corporation Counsel

The Corporation Counsel is nominated by the Mayor and is subject to confirmation by the City Council. The Counsel functions to certify the City’s legal authority for, and approve, all “contracts, leases and other legal papers.”² As discussed in this Primer, the Corporation Counsel must also give prior approval to advance Emergency Procurement requests.³

² NYC Charter §327(b), 394(b)

³ NYC Charter §315

Office of Management and Budget (OMB)

OMB is the City’s chief financial agency, responsible for developing City budgets and overseeing the budgets of nearly 90 agencies and related entities. OMB approval may be required during various stages throughout the contracting process. Additionally, OMB conducts a separate contract review on behalf of the Financial Control Board for consistency with the terms of the Financial Emergency Act. The OMB Director also sits on the FCRC.

Department of Investigation (DOI)

DOI is responsible for the investigation and referral of criminal prosecution for cases involving fraud, corruption, and unethical conduct among all persons and entities that receive City funds, including City employees and contractors. Among other tasks, DOI runs checks on individuals and/or vendors that are awarded contracts with the City to determine if they have been previously investigated by DOI.

Small Business Services (SBS)

SBS is mandated by the Charter to manage the City’s operations relating to business and economic development, the enhancement of economic development and financial opportunity for minority and women owned business enterprises, and the realization of equal employment opportunities by City contractors. SBS also contracts with and retains the New York City Economic Development Corporation to function as a development consultant, and to provide economic development-related services on behalf of the City. SBS runs New York City’s certification programs, including the M/WBE Program, the Emerging Business Enterprise (EBE) Program, and the Locally-based Business Enterprise (LBE) Program. SBS also maintains the [Online Directory of NYC Certified Businesses](#).

Overview of Contract Cycle

While the Comptroller’s office plays an important role in City contracting, it is also often the last in a series of steps in the process. The Comptroller is also the only office in the contracting process to have a charter-mandated deadline to complete its work within 30 calendar days. Processes for planning, procurement, administration, and even aspects of oversight, are managed by the Mayor’s office or by executive leadership in “Non-Mayoral” and “Other Agencies”.⁴

Establishing Needs for Contracts

Contracts enable the City and its agencies to provide critical services for the public. An agency may determine that a new contract is needed to procure goods and services that are essential to its

⁴ See Section III for agency category definitions

operations (e.g., securing office supplies or IT services for its staff). In other cases, an agency may need to use contracts as a mechanism to fulfill certain policy initiatives like expanding 5G access. How the City determines that a good, service, or construction is needed, and where and how they are delivered, varies. This Primer’s focus is on the procurement process, which involves the buying, purchasing, or acquisition of goods, services, or construction, after a need has been established.⁵

The PPB Rules, combined with relevant Executive Orders, Local Laws and other applicable rules and laws, set forth the procedural requirements for each procurement method discussed in this Primer. While the individual requirements vary based on the method, there are some milestones that are common across most contracting processes.

Pre-Solicitation

Actions for the pre-solicitation review phase (PSR), as defined by PPB rules, include assessing the existing market for the good, service, or construction; estimating the expected cost; and selecting the most appropriate procurement method for the City’s need.⁶ Once the PSR is complete, the ACCO creates a summary of this information inclusive of the proposed procurement method. Depending on the procurement method, the expected cost, the type of goods or services, and other factors, MOCS and OMB may be required to approve the plan and certify that it complies with all applicable rules.

Agencies may only commence the procurement process once the ACCO has received all necessary approvals. Although the next step varies depending on the chosen procurement method, agencies must generally solicit quotes, bids or proposals from prospective vendors. The selected sourcing method also determines the level of competition and the way that an agency solicits interest from vendors. In some cases, the procurement method dictates that the agency must make the opportunity public to everyone. In other instances, the agency is given discretion as to how many vendors, or even from which singular vendor, it will make a solicitation.

Evaluation of Submissions

Procurement methods also inform what considerations agencies may take when selecting a vendor for a particular contract award. Selections may be based on price bid alone, or they may include qualitative factors as well. Some procurement methods don’t require the agency to make a substantive evaluation, however in most instances, a selected vendor must be found by the agency to have been responsive to all material terms and conditions of a solicitation, and to all specified requirements.⁷

⁵ 9 RCNY §1-01 (e).

⁶ PPB Rules §2-02(a). Note that this Section also sets forth exclusions to the PSR.

⁷ PPB Rules §2-07(a)

Vendors that were found by an agency to not be responsive, and were therefore not awarded a contract, have the right to appeal. Unsuccessful vendors can also request that the agency meet to discuss the reasons that led to the non-award determination. Information learned from such debriefing sessions can better prepare a vendor to submit more successful bids and proposals in the future.

Award Process

Regardless of the method of selection or evaluation, the City can only make purchases from, and award contracts to, responsible vendors.⁸ There are various tools and resources used by agencies when conducting a vendor background check to determine if the vendor is responsible.

In most instances where an agency selects a vendor for a new contract award, the vendor must submit disclosures into the Procurement and Sourcing Solutions Portal (PASSPort) pertaining to the organization's history and its principal owners and officers.⁹ Required disclosures include any adverse information relating to the organization, its principal owners, affiliated entities, and government contracts held by the organization or its affiliates, within relevant timeframes. If the disclosed information or concurrent agency background checks raise questions about the vendor's business integrity, or the vendor's ability to meet the contract's requirements in a way that cannot be adequately addressed, the agency may find that the vendor is not responsible.

Only once an agency determines that a responsive vendor is also responsible may it then move forward with awarding and executing a contract. Prior to the final execution of a contract, the award process may include additional steps, including public hearings, as well as many of the same internal and outside oversight approvals that are required during the PSR stage. Depending on the nature and dollar value of the final award, additional oversight approval from the Financial Control Board or one of the Deputy Mayors may be required. Once all procedural requisites are finalized, the agency can move the contract to the next and final stage of the process.

Contract Registration

The Comptroller's Bureau of Contracts Administration (BCA) is responsible for the review and registration of all City procurement and revenue contracts, real property transactions, contract modifications, and task orders pursuant to the Charter, unless registration authority has been otherwise delegated.¹⁰ Although BCA's review occurs towards the end of the City's contracting

⁸ PPB Rules §2-08(a)

⁹ PASSPort is a digital procurement platform, managed by MOCS, that helps certain NYC agencies manage various stages of the procurement process from vendor enrollment, to the solicitation of goods and services, to contract registration and administration.

¹⁰ In addition to exclusions listed in NYC Charter §328(d), agencies have been delegated authority to register contracts for goods and services transactions valued at less than \$25,000 and construction transactions valued at less than \$50,000 internally

cycle, this review ensures that public dollars are being used in accordance with applicable law. BCA specifically checks that the procedural requisites and required certifications discussed above have been followed, that there was no corruption in the letting of the contract, and that the awarded vendor has not been debarred.

BCA works diligently to complete its review in a timely manner so that vendors can be paid for the goods, services, or construction being provided and to reduce any risk of interruption of services to New Yorkers that may depend on a contract's activities. Under the Charter, BCA must complete all registration reviews within 30 calendar days following an agency filing.¹¹ As indicated earlier, this is the only contracting milestone that has a required timeline for completion.

BCA conducts parallel reviews (under the same 30 calendar-day timeframe) with the Comptroller's Bureau of Accountancy (BOA) for contracts processed from the City's Capital Projects Fund. Contracts produced out of the Capital Projects Fund are financed by capital dollars as opposed to expense funds, because they produce assets that provide an economic benefit to the City over an extended period, greater than one year; meaning they are long-lived assets.

Capital projects funded by capital dollars lead to the creation of various types of capital assets, which includes land, buildings, equipment (including software), lease assets and infrastructure. As part of the capital registration process, BOA reviews the Fixed Asset Intent document (FN) processed in the NYC Financial Management System (FMS) to verify, at a minimum, the accuracy of the following information with respect to the capital project: asset class, useful life, capitalization trigger, and compliance with certain requirements of Comptroller's Directive 10 and Directive 30. The purpose of BOA's review is to allow the City's audited financial statements presented in the form of the Annual Comprehensive Financial Report (ACFR) to adequately report the City's capital assets in accordance with generally accepted accounting principles (GAAP).¹²

Post-Registration

Once a contract has been registered, the agreement is legally implemented, and the agency can pay vendors for the goods, services, or construction being provided. Agencies are required to monitor the performance of contracted vendors and to take action if vendors are no longer able to meet the terms of the contract, or if a vendor integrity issue is discovered that could lead to a non-responsibility determination. Finally, agencies are authorized to change certain aspects of registered agreements through the modification process, which is discussed later in this Primer.¹³

without having to submit the transactions to BCA for review and registration. When an agency exercises this delegation, BCA performs no registration review function nor is BCA responsible for performing any aspect of the registration process on behalf of the awarding agency in FMS.

¹¹ NYC Charter §328(a)

¹² NYC Charter §93(n)

¹³ See "Modifications" under "Additional Contract Processes" in this Section for more information.

Contract Categories Overview

Contract actions are an essential vehicle for the City to meet its needs. This Primer categorizes and defines new contract actions (CT1s, RCT1s, MA1s, and MMA1s) into five groups including: competitive methods; limited or non-competitive methods; transactions that are not subject to Procurement Policy Board (“PPB”) rules; supplemental contracts; and revenue contracts.¹⁴¹⁵¹⁶ This Report primarily derived contract groupings from FMS Award Method codes, which reflect different ways that the City solicits proposals and bids.

Agencies select award methods based on guiding procurement rules (most often set by the PPB), and with an eye towards maximizing value for a particular need.¹⁷ For instance, competitive methods are designed to secure the best value by measure of price or quality, and PPB rules note that there is a preference for awarding contracts by competitive sealed bidding.¹⁸ However, there are often situations where other value interests may supersede open competition, such as when services need to be procured quickly in response to an emergency, or when only one vendor provides a good or service.

Table 5 below provides a summary of the contract groups and subgroups that are defined in this Primer.

Table 5: Breakdown of Contract Groups

Contract Groups	New Contract Subgroups ¹⁹
Group 1: Competitive Method Contracts	Competitive Sealed Bid Contracts
	Competitive Sealed Proposal Contracts
	Accelerated Procurement Contracts
	Buy-Against Procurement Contracts

¹⁴ CT1 is a general contract used for both expense and capital contracts; RCT1 is a revenue contract; MA1 is a master agreement and MMA1 is a multiple master award contract used when more than one contract will be awarded to a vendor.

¹⁵ The Procurement Policy Board (PPB) is the governing entity that is responsible for the promulgation of the City’s procurement rules. These rules inform the city’s procurement activities, including how the City solicits bids and proposals from vendors and how contracts are awarded. The PPB consists of five members, three of who are appointed by the mayor, and two of whom are appointed by the Comptroller.

¹⁶ Since the award methods used to for Revenue Actions overlap with the awards methods listed in the other contract groups, the transactions in contract Group 5 are identified by FMS Transaction Code RCT1.

¹⁷ The Department of Education, for example, must also reference their own Procurement Policy and Procedures (PPP).

¹⁸ See PPB Rules §3-01(b).

¹⁹ Each subgroup is comprised of one or more award methods or contract types. See Appendix 24 in Section XII of this Report for a breakdown of award methods or contract types within each subgroup.

Contract Groups	New Contract Subgroups ¹⁹
Group 2: Limited or Non-Competitive Method Contracts	Demonstration Project Contracts
	Determined by Government Mandate Contracts
	Discretionary (Line Item) Contracts
	Emergency Procurement Contracts
	Government-to-Government Contracts
	Innovative Procurement Contracts
	Intergovernmental Procurement Contracts
	Micropurchase Contracts
	Negotiated Acquisition Contracts
	Small Purchase Contracts - General
	Small Purchase Contracts – M/WBE
	Sole Source Contracts
Group 3: Transactions not subject to PPB Rules	Force Account Contracts
	Grant Agreements
	Miscellaneous Contracts
	Professional Membership Negotiation Contracts
	Regulated by Government Commission
	Subscription Contracts
Group 4: Supplemental Contracts	Renewals
	Assignments
Group 5: Revenue Contracts²⁰	Franchise Agreements
	Concession Agreements
	Revocable Consents
	Corpus Funded agreements

²⁰ Since the award methods used to enter into Revenue Actions may overlap with the awards methods listed in the other Contract Group, the transactions in Contract Group 5 are identified by FMS Transaction Code RCT1. The subcategories denoted in Contract Group 5 reflect contract type categories, rather than award methods.

Contract Groups	New Contract Subgroups ¹⁹
	Other Revenue

Group 1: Competitive Method Contracts

Of all five contract groups, competitive methods tend to account for the largest share of registered contract value in NYC. As noted above, the award methods that comprise this contract group are designed to help the City obtain the highest value based on price or quality.

The PPB also provides the City with opportunities to consider which offer for goods or services represents the “best value” to the City under competitive award methods. “Best Value” is a basis for awarding contracts, which allows agencies to consider objective and quantifiable analysis of factors, aside from price alone, to optimize quality, cost, and efficiency. Since the original Best Value rule was introduced in 2013, the City has expanded on it to support increased utilization of M/WBEs. For example, amendments adopted into the PPB rules in January of 2020 allow City agencies to weigh a vendor’s M/WBE status in Best Value considerations when evaluating bids and proposals.²¹

For the purposes of this Primer, competitive methods include registered contract actions that were awarded via competitive sealed bids and competitive sealed proposals, including from a prequalified vendor list (PQVL), and accelerated procurements.

Competitive Sealed Bid Contracts

Competitive Sealed Bid (CSB) is a default award method under the PPB rules, General Municipal Law (GML) 103 and most other municipal procurement rules.²² It functions to award contracts to responsive and responsible vendors that provide the lowest price point for a particular good, service, or construction while still meeting the agency’s programmatic requirements and needs. Agencies must specify their requirements and criteria for vendors, which may include contractual terms and conditions, as well as minimum qualifications that must be met by the vendor, by issuing an invitation for bid (IFB).²³ CSBs are most often used for contracts pertaining to goods and construction. In fact, absent specific directives from other legal authority, CSBs are the required method for any contracts pertaining to public works contracts.²⁴

Agencies may also solicit CSBs by sending notice to a PQVL. Agencies may establish PQVLs for different types or sizes of projects. While opportunities for vendors to join an agency’s

²¹ See PPB Rules §1-01(e), 3-02(o)(1)(iv), 3-03(a)(1), 3-03(g), and 3-03(g)(6)

²² GML §103 and applicable sections of the Code of Federal Regulations (CFR)

²³ NYC Charter §313(b)

²⁴ GML §100(5)

prequalified group must be continuously available to the public, and notice placed at least annually in the City Record, these lists are intended to save time by identifying prospective vendors that are known to hold the requisite experience or meet other needs set forth by the City.²⁵ While all vendors must still be found responsible by an agency before being awarded a new CSB contract, agencies can conduct a preliminary background check on PQVL vendors to reduce the risk of a non-responsibility determination.

Competitive Sealed Proposal Contracts

Competitive Sealed Proposals (“CSP”) are another competitive method whereby agencies solicit goods, services, or construction-related services via a Requests for Proposal (“RFP”). RFPs are generally used when the scope of a need is not well defined, and an agency needs to understand an applicant vendor’s approach to make the best award determination. Agencies must award proposals that are determined to be the most advantageous to the City, and may take into consideration price, but also other criteria set forth in the RFP, such as a vendor’s technical approach, organizational capability, organizational capacity, and M/WBE status.²⁶ Other factors outside of the RFP cannot be considered by agencies when making award decisions, although there are generally multiple rounds of evaluation, and opportunities for vendors to interview or present their proposal to an agency.²⁷ Like with CSBs, agencies can also issue an RFP notice to a PQVL list.

Accelerated Procurement Contracts

Accelerated Procurements enable agencies to fast track the bidding process for commodity purchases such as fuel that must be obtained quickly due to shortages or rapid price fluctuations. Pursuant to the PPB Rules, contracts procured under this method are not required to be registered, but agencies must file all required documents with the Comptroller within 30 calendar days.²⁸ Accelerated Procurements are also exempt from public hearing requirements, but agencies must make contract award decisions based solely on which responsive and responsible vendor offers the best price²⁹. Agencies may only use this method for commodities that have been determined eligible for Accelerated Procurement by the City Chief Procurement Officer (CCPO). Eligible commodities are typically those at risk of falling into short supply or those that are subject to short-term price fluctuations.

²⁵ NYC Charter §324

²⁶ PPB Rules §3-03(a)

²⁷ NYC Charter §319

²⁸ PPB Rules §3-07(e)(3)

²⁹ NYC Charter §326(a)

The Department of Citywide Administrative Services (DCAS) tends to be the only agency that uses the Accelerated Procurement method. Absent directives to delegate this authority, DCAS is mandated under the Charter to purchase, inspect, store and distribute all goods, supplies, materials, equipment and other personal property required by any City agency.³⁰

Group 2: Limited or Non-Competitive Methods

There are many circumstances where price and quality considerations still play a driving force in award decisions but are nonetheless qualified by other value interests. Agencies may use limited or non-competitive procurement methods for circumstances when full competition is neither practical nor possible. These circumstances include, but may not be limited to:

1. **Time-sensitivity:** The City may need to preserve continuity of services if a vendor contract is terminated for any reason.
2. **Market constraints:** The number of vendors who are able to provide a particular good or service may be limited.
3. **Legal or statutory guidelines:** Directives from legislation or federal grants may inform how a selection process can be managed.

While responsible for less registered contract value than competitive methods, limited or non-competitive procurement methods often comprise a larger share of new procurement contracts.

Buy-Against Contracts

Buy-Against procurements are used by City agencies to preserve the continuity of goods or service provision after a vendor defaults on their contract, or following the termination of a vendor's contract because of a material breach to the agreement.³¹ The new contract cannot exceed the term remaining on the contract that was defaulted or terminated.³²

Demonstration Project Contracts

Demonstration Project procurements are for short-term, carefully planned, pilot exercises designed to test and evaluate the feasibility and application of a new product, approach or technology that is not already used in the City.³³ This method allows agencies to evaluate the effectiveness, efficiency, and the reliability of a new product or service without committing a large amount of resources. Agencies may solicit vendors for such projects, or they can award

³⁰ NYC Charter §823(a)

³¹ PPB Rules §1-01(e)

³² PPB Rules §4-07(a)

³³ PPB Rules §3-11(a)

Demonstration Project contracts in response to an unsolicited proposal. In order to use this procurement method, agencies must demonstrate that:

- Testing is needed to evaluate the service or product.
- The service or product cannot be reasonably acquired through a competitive solicitation.
- The product or service is not currently in use by the City.
- The results of the project will be documented and made publicly available.
- The product or service will be procured competitively going forward if testing supports continued use.
- Any outside funding used to justify the demonstrated project award is appropriately documented.

Determined by Government Mandate Contracts

This procurement method must be used when terms set by a non-City funding source, a statute or rule, a court order or consent decree, or some other applicable law dictates that an agency must use a particular method or source for procuring goods and services.³⁴ For example, Section 162 of New York State Finance Law allocates a preferred source status to vendors which exempts them from competitive procurement requirements in the interest of advancing special social and economic goals.³⁵ Alternatively, agencies may apply for federal funds to provide goods and services to city residents which, if granted, necessitate that the agency contract with a particular vendor. [Click this link](#) to access the New York State Office of General Services Preferred Source Guidelines.

Discretionary (Line-Item Appropriation) Contracts

Discretionary procurements reflect agreements between City agencies and nonprofit organizations, or public service providers, that have been selected by City elected officials other than the Mayor and the Comptroller, or allocated through line-item appropriations in the city budget.³⁶ While the vast majority of elected official selections are made through the City Council, the list of elected officials that are able to enter into discretionary contracts also includes the five Borough Presidents.

[Click this link](#) to access the City's Discretionary Award Tracker, which allows users to search the status of all City Council Discretionary Awards from the previous three fiscal years.

³⁴ 9 RCNY §1-02(d)

³⁵ STF Chapter 56, Article 11

³⁶ 9 RCNY §1-02(e)

[Click this link](#) to access expenses funded against City Council Discretionary awards by organization, Council Member, Borough, or Fiscal Year.

Emergency Procurement Method: Pursuant to Procurement Rules

The Charter and PPB rules define an emergency condition as “an unforeseen danger to life, safety, property, or a necessary service” which creates an immediate and serious need for goods, services, or construction that cannot be met quickly enough through normal procurement methods.³⁷ Agencies seeking to utilize this procurement method must solicit and receive prior approval from the Comptroller’s Office and Corporation Counsel/Law Department.³⁸ They must also seek to obtain as much competition in vendor selection as is possible and practical given the conditions of the emergency.

Agencies then submit a formal emergency declaration to the Comptroller’s Office and Corporation Counsel for approval, and to the City Council for notice. The emergency declaration must include information about the emergency itself, the goods or services or construction needed, the projected cost, the vendor selected in the emergency procurement, and basis of the awarded vendor’s selection. The requirement to register a contract before it becomes effective is waived for EPs under PPB rules, however agencies are required to submit a copy of the contract for an audit of the procedures and the emergency’s basis with 30 days of award.³⁹ While work can begin under the framework of the emergency declaration once an award is made, agencies must still submit contract packages to the Comptroller’s Office in order for funds to be released for payment.

Government-to-Government Contracts

Government-to-Government contracts are used in circumstances where agencies determine that it is in the City's best interest to procure goods, services, construction, or construction-related services from another governmental entity.⁴⁰ In such cases, the accepted price, terms, and conditions of the contract is negotiated between the agency and the governmental entity. The

³⁷ NYC Charter §315 and PPB §3-06

³⁸ During a state of emergency and in limited circumstances, the Mayor can issue Executive Orders that suspend local laws and regulations, subject to review and renewal every five days. For example, during his tenure, Mayor Bill de Blasio issued several emergency executive orders (E.E.O.) suspending procurement law and rules. E.E.O. 101, for instance, modified the PPB’s emergency procurement method, suspending the Comptroller’s prior approval and registration for emergency contracting, and was subsequently revoked.

³⁹ See PPB § 2-12(e). Section 328(d)(1) has a similar clause, but states that the agency shall submit the contract “as soon as is practicable”

⁴⁰ 9 RCNY §3-13

agency’s Chief Accounting Officer (ACCO) must cite the reasons why procurement through another government agency is in the city’s best interest in a written determination, which is subject to approval by the CCPO.⁴¹

Innovative Procurement Contracts

An Innovative Procurement is a way for the City to test and evaluate the feasibility and application of new procurement methods that are not yet authorized by the PPB Rules.⁴² No later than eight months following the registration of a contract procured via an Innovative Procurement method, the CCPO must submit a report recommending whether it would be in the City’s best interests to codify the new procurement method going forward.⁴³

The Innovative Procurement method has also advanced the City’s use of the “Design-Build” project delivery method, which is intended to expedite the completion of major public works projects. Design Build uses a two-step qualifications-based procurement process to select a single team of designers and builders to support public works projects from start to finish. The use of this method allows City agencies to make a contract award to a single vendor, based on Best Value, that will be responsible for overseeing all phases of the project, including design and construction. By going through a single vendor, Design Build is ultimately intended to reduce costs and expedite project completion while ensuring quality control and compliance.

The passage of the New York City Public Works Investment Act (PWIA) in December 2019 authorized the Department of Design and Construction (DDC), Department of Transportation (DOT), Department of Parks and Recreation (DPR), Department of Environmental Protection (DEP), School Construction Authority (SCA), New York City Housing Authority (NYCHA), and Health and Hospitals Corporation (HHC)—to use Design Build method as described above.⁴⁴ However, as the current PPB Rules do not contemplate a process to procure both design and construction services in the same contract, these City agencies must leverage the Innovative Procurement method to operationalize the PWIA authority under New York State law.

Intergovernmental Procurement Contracts

Intergovernmental Procurement contracts are used by agencies looking to procure goods, services, or construction by tapping into a contract held by another government agency. Under PPB rules, a city agency can procure through the United States General Services Administration or any other federal agency or the New York State Office of General Services or any other State agency if the price for goods is lower than the prevailing market rate and the costs for services

⁴¹ PPB Rules §3-13(c)

⁴² 9 RCNY §3-12(a)

⁴³ 9 RCNY §3-12(f)

⁴⁴ A7636B §2(a)

or construction are reasonable.⁴⁵ This process can save the City time and help it to realize significant cost savings stemming from volume discounts set forth in the parent contract.

Micropurchases

Micropurchases are used to buy goods and services up to \$20,000 for most services, or up to \$35,000 for construction services.⁴⁶ If these thresholds are not surpassed, including through any future contract modifications, agencies may buy from any available and responsible vendor at a fair price, without any competition. Agencies making micropurchases must ensure that such purchases are distributed appropriately, including to M/WBEs. Agencies are prohibited from engaging in the practice of contract splitting, whereby the full value of a project is artificially divided to keep contract values under the allowable threshold.

Negotiated Acquisition and Negotiated Acquisition Extension Contacts

Under section 3-04 of the PPB rules, agencies can move to limit competition via a negotiated acquisition procurement when the ACCO determines, with CCPO approval, that:

1. There is a time-sensitive situation where a vendor must be retained quickly to meet the terms of a court order or consent decree, to avoid loss of available funding, or to ensure continuity of services.
2. There are a limited number of vendors available and able to perform required work.
3. There is a need to procure legal services or consulting services in support of current or anticipated litigation, investigative or confidential services.
4. There are previously unforeseen or unforeseeable construction-related service needs, typically after construction has begun, that cannot be addressed by a change order or other contract modification.

Negotiated Acquisition Extensions (NAE) are typically used when agencies have exhausted all contractual renewals, as well as contract extensions permitted by other sections of the PPB Rules, because goods or services were needed for a longer time than originally anticipated, or because the agency has not been able to procure a replacement contract in a timely manner.

Small Purchase Contracts – General

Small Purchase procurements enable the City to procure goods, services, and construction above the micropurchase limit without competition or public advertisement as long as the amount of

⁴⁵ PPB Rules §3-09(a)

⁴⁶ 9 RCNY §3-11(a)

the contract is below a “small purchase limit” set by the PPB and the City Council.⁴⁷ The current small purchase limit is generally \$100,000, however the threshold for the M/WBE Non-Competitive Small Purchase method, described below, is higher. Like micropurchases, agencies cannot surpass the threshold, including through future contract modifications, and must ensure that the value of purchases are not artificially divided to keep contract values under the small purchase threshold.

Note: small purchase procurements are capped at the above-mentioned dollar threshold because their sourcing methods differ than those used for higher dollar value procurements.⁴⁸ For instance, PPB Rules outline a competition objective for the Small Purchase contracts, currently known as the “5+10” method.⁴⁹ Specifically, agencies are required to solicit bids from a list of five randomly selected vendors and at least ten randomly selected City-certified M/WBE vendors when making awards for goods and services (over \$20,000) as well as construction (over \$35,000), as long as the total value of the contract does not exceed \$100,000. Vendors are randomly selected from the citywide bidders list based on FMS commodity codes that are entered into the system by an agency. Agencies can proceed without competition if only one responsive bid or offer is received as long as the ACCO determines the price to be fair and reasonable, and that other vendors had an opportunity to respond.

Small Purchase Contracts - M/WBE Non-Competitive

M/WBE vendors are and historically have been underrepresented in City contracting. The M/WBE Non-Competitive Small Purchase (NCSP) method was established in 2017 to increase the participation of M/WBE vendors doing business with the city by streamlining aspects of the contracting process.

The PPB rules were amended in 2017 to allow the City to purchase goods, standard services, and professional services from any City-certified M/WBE valued over \$20K (or \$35K for construction) up to and including \$150,000 without a formal competitive process.⁵⁰ In November 2019, PPB unanimously voted to amend PPB Rule 3-08 again to increase this dollar threshold up to \$500K, consistent with Chapter 98 of the laws of 2019. This threshold was then increased to \$1 million following New York State legislation passed in October 6, 2022.⁵¹ In June 2023 the PPB rules were amended to align with the threshold stipulated by State legislative authority, which will allow the

⁴⁷ PPB Rules §3-08(a)

⁴⁸ Agencies can still choose to utilize non-small purchase procurement methods for contracts valued under the small purchase limits.

⁴⁹ PPB Rules§3-08(c)

⁵⁰ Micropurchases are used to buy goods and services up to \$20,000 for most services, or up to \$35,000 for construction services (9 RCNY § 3-11(a)) As long as these thresholds are not surpassed, including through any future contract modifications, agencies may buy from any available vendor at a fair price, without any competition.

⁵¹ Assembly Bill A10459

City the flexibility to quickly implement the change moving forward.⁵² On June 6, 2023, the New York State Senate passed legislation that will amend the City Charter to increase the dollar threshold for the M/WBE NCSP method from \$1 million to \$1.5 million.

To further reduce delays for agencies and M/WBE vendors, the Comptroller's office signed a delegation and approval document allowing agencies to self-register contracts procured under this method in exchange for certain reporting requirements. Under the terms of this delegation, documentation must still be filed with the Comptroller's Office within 30 calendar days of self-registration consistent with requirements outlined in the Charter.

Sole Source Contracts

Sole Source procurements are used when only one vendor is capable of producing, or able to provide, a required good, service or construction.⁵³ Whenever an agency determines that there is only a single source, it must publish notice in the City Record (CR) and solicit the application of vendors qualified to provide the required good or service in the future.⁵⁴ The agency must also file its Sole Source determination with the Comptroller's Office.⁵⁵

Group 3: Transactions Not Subject to PPB Rules

The contracts in Group 3 reflect transactions that are either not mentioned in the PPB rules or are otherwise explicitly excluded in Section 1-02(f). This group tends to make up a relatively small share of the City's contracting footprint.

Force Account Negotiation Contracts

A Force Account is the use of a grantee's own labor force to carry out a capital project. Force Account agreements enable City agencies to enter into contracts with various railroad agencies and companies, such as the New York City Transit Authority, the Metropolitan Transit Authority, and the Long Island Rail Road, when rehabilitation and reconstruction work must be performed on City-owned property (including bridges and streets, which are above or adjacent to train traffic). Payments made under Force Account contracts are typically used towards labor, material, and equipment.

⁵² The PPB is comprised of five members, two of whom are appointed by the Comptroller. Until such time that the increase is permanently codified under the PPB rules, City agencies can procure contracts under the higher threshold using the Innovative Procurement method discussed above.

⁵³ 9 RCNY §1-01(e)

⁵⁴ NYC Charter §321

⁵⁵ PPB Rules: §3-05(b)

Grants Agreements

A “Grant” is 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.⁵⁶ This contrasts with typical procurement methods where a government entity is seeking the delivery of a specified end-product like a good or service. Grantees must often meet specific parameters in order to be eligible for a grant, but they are not bound by a contract for services.

Miscellaneous Contracts

The award methods in this group are generally used by agencies for contracts that don’t fall squarely into any other category. Such contracts could reflect billing and accounting services, for the administration of insurance premiums, or reimbursements to non-public schools for school security services.

Professional Membership Contracts

Agencies use Professional Membership contracts to establish or renew memberships for agency personnel in professional associations.⁵⁷ Examples include bar associations, government groups, or other industry associations.

Regulated by Government Commission

This category includes contracting methods for Public Utility and Cable Service contracts.

Agencies use Public Utility methods when entering into agreements with public utilities regulated by the NYS Public Service Commission (“NYSPSC”), where rates charged to customers have been tariffed pursuant to the Public Service Law, or where there are no practical competitive alternatives.⁵⁸ Such services typically include local telephone services, as well as purchases relating to electricity, gas, water, and steam.

Agencies may use a Cable Service procurement method when contracting for cable television services or other public services that are similarly regulated by the NYSPSC.⁵⁹ It is also used to cover contracts with utilities regulated by the Federal Energy Regulatory Commission or the Federal Communications Commission.

⁵⁶ 9 RCNY §1-02(f)

⁵⁷ 9 RCNY §1-02(f)(4)

⁵⁸ 9 RCNY §1-02(f)(2)

⁵⁹ 9 RCNY §1-02(f)(3)

Subscriptions Contracts

Agencies use this method to purchase electronic or paper-subscriptions to magazines, periodicals, or off-the-shelf training series.⁶⁰ Certain software licenses may also be procured via subscription contracts. Agencies do not need to engage in a competitive search for subscription services as this method falls outside of the PPB rules, and because there is often only one provider for a desired subscription.

Group 4: Supplemental Contracts

The contracts in Group 4 reflect new agreements whose terms were set forth by a preceding contract. They are distinct from modifications to existing contracts, which this Primer will discuss in greater detail under “Additional Contracting Processes”.

Renewals

Agencies use Renewals to continue the provision of goods, services, or construction with the same vendor following the expiration of a prior base contract. Under the terms of PPB rules, the Renewal contract must have substantially the same terms and conditions as the original contract, but may possibly have revised quantities, lists, or schedules of items to be supplied which do not alter the scope of the contract.⁶¹ Renewal options are established in the base contract and are used at the sole discretion of the City agency. Vendors receive notice about renewal options during the original solicitation and are obligated to comply if the agency elects to exercise a renewal. Contracts may have one or multiple renewal options.

Assignments

Assignments are used by the City to transfer some or all of the terms of an existing contract to a different vendor by means of a new contract. Agencies can choose to approve a vendor’s request to assign their contract so as to preserve the continuity of good and services. Assignments are typically associated with situations where a vendor has merged with another business entity or sold their business.

Group 5: Revenue Contracts

This group of contracts generally reflect agreements that endow vendors with the right to use the City’s property in exchange for payment or for the provision of public services. Since agencies may use procurement methods discussed above, like CSBs or CSPs, to procure revenue contracts,

⁶⁰ 9 RCNY §1-02(f)(5)

⁶¹ PPB Rules §4-04(a)

the agreements making up Group 5 were isolated based on the RCT1 transaction code, which is used in FMS to record and track revenue agreements.

The definitions and guidelines pertaining to the first three types of revenue contracts outlined under Group 5; Franchises, Concessions, and Revocable Consents, are defined in Chapter 14 of the Charter. With limited exceptions, all monies generated from these revenue agreements are deposited into the City's General Fund.⁶²

Group 5 also includes Corpus Funded agreements, which relate to the City's asset management activities. Corpus Funded agreements are currently recorded in FMS as revenue transactions, but they do not actually generate revenues for the City.

Franchise Agreements

Under terms set forth in the Charter, agencies can endow vendors with the right to occupy or use City property to provide a public service.⁶³ These agreements are subject to review and approval by the City's Franchise and Concession Review Committee (FCRC), which is comprised of the Mayor and a mayoral appointee, the Director of the Office of Management and Budget, the City's Corporation Counsel, and the Comptroller.

Franchises have been recently used for the development of broadband internet services by private companies, via a public right-of-way.

Concession Agreements

Agencies use Concession Agreements to bestow vendors with the ability to privately use City-owned property.⁶⁴ Most NYC residents and visitors would recognize examples of Concessions such as the pushcarts in City parks, various outdoor markets and cafes located on City land, or among the City's golf courses. Like Franchises, Concession Agreements are also subject to oversight by the FCRC. In exchange for use of City-owned property, the agencies typically generate revenue from vendors in the form of guaranteed annual fees or a gross share of sales.

Revocable Consent Agreements

Revocable Consent Agreements enable the city to permit applicants to engage in construction projects, for private use and benefit, on or around City-owned property.⁶⁵ As its name suggests, these agreements may be granted for a fixed term, and are revocable at any time by the

⁶² NYC Charter §109

⁶³ NYC Charter §362(b)

⁶⁴ NYC Charter §362(a)

⁶⁵ NYC Charter §362(d)

administering City agency. Common examples of revocable consents include things like the placement of pipes under city property by a gas company, or the construction of sidewalk cafes.

Corpus Funded Agreements

The Comptroller serves as the fiduciary for New York City's five pension funds, investing responsibly to ensure long term returns from, and growth of, retirement funds for City employees. Corpus Funded Agreements function as a mechanism to finance investment management services related to the City's five pension funds. Dollar values associated with Corpus Funded Agreements reflect funds paid from the corpus of City pension funds, rather than revenues generated.

The public can view updates relating to assets under management anytime [on the Comptroller's website](#).

Additional Contracting Processes

This Section of the Primer provides additional context around other contracting actions that reflect a significant portion of the City's contracting activity.

Real Property Transactions

Real Property Transactions are non-revenue contracts that are also not defined as procurements in either Chapter 13 of the Charter or in the PPB rules. These transactions tend to include Agreements, Real Estate Sales and Purchase Agreements, and Watershed Agreements.

Lease Agreements

The City frequently enters in to Lease Agreements with private landlords to secure the use of real property for agency business or to facilitate other public services. These agreements are not subject to competitive bidding requirements.

Real Estates Sales and Purchase Agreements

Agencies can use this method to purchase property from a seller, or to reimburse a property owner for the use of their space.

Watershed Agreement

The NYC Watershed consists of the Catskills, Delaware and Croton waterway systems. According to the NY Department of State, it spans 2,000 square miles and contains 19 reservoirs. The NYC Watershed serves 9 million New Yorkers with 1.3 billion gallons of water daily, and the City's Watershed Agreement, which was signed in January 1997, grants New York City Department of

Environmental Protection (DEP) authority to manage the City’s watershed properties. DEP is also responsible for the operation of the City’s water assets through service contracts.

Modifications

Agencies are authorized to change certain aspects of existing registered agreements, such as:

- Updating contract amounts to reflect additional authorized or omitted work;
- Extending the duration of a contract for good and sufficient cause (generally not for longer than an additional year); and
- Administrative reasons, such as encumbering funds to expense contracts or revising commodity and accounting lines.⁶⁶

Any change that requires a material alteration to the scope of work outlined in an initial contract’s terms cannot be resolved by a modification. The agency must instead procure a new contract in such cases.

Registration authority for most administrative modifications, as well as expense contract modifications adjusting the amount of an underlying contract by less than 10% of its original value, are typically delegated to City agencies.⁶⁷ Modifications that encumber funds against capital contracts, as well as modifications that change the duration of a contract are typically subject to review and registration by the Comptroller.⁶⁸

Modifications extending the underlying duration of a contract also typically add funds to finance the continuation of the good or service provision. However, modifications can also be used to reduce the amount of funds associated with an underlying contract in some cases.

Construction Change Orders

Construction change orders (CCO) reflect a subset of the modifications discussed above. They are typically used to authorize non-material additional labor and/or equipment needed to complete a construction project. CCO conditions are often categorized as follows: scope change (non-material only); administrative change; design omission; field condition or a design error. In addition, there may be other changes that don’t fit within the above categories but still require a modification to the construction contract, such as extra work, Comptroller dispute determinations, and no-cost change orders.

⁶⁶ 9 RCNY §4-02

⁶⁷ Modifications to capital funded contracts still require Comptroller registration, even if the amount of the adjustment is within 10% of the baseline value.

⁶⁸ Excluding cases where authority has been delegated to City agencies or is otherwise not legally required

Due to the unpredictable nature of New York City construction, as well as lengthy CCO approval process, the Comptroller’s Office held discussions with DDC, the Office of Management and Budget (OMB), and the Law Department, before ultimately authorizing DDC to use an Expanded Work Allowance (EWA) on all contracts. EWA provides for a funded, pre-registered allowance in a construction contract that can be accessed as a project progresses to enable faster payments to contractors when certain types of common, but unanticipated, project conditions arise (i.e., the “known” unknowns). EWA has resulted in a significant reduction in the time between the discovery of an eligible project condition and the issuance of additional payment. In light of this success, the Comptroller’s Office is working with other City construction agencies to expand use of the EWA program.

Task Orders

Task Orders (TO) are used by agencies to procure particular goods or services under terms that have already been established under an existing “master agreement” contract.⁶⁹ The registration value of a master contract reflects the maximum amount the city may need to spend, but funds are issued to vendors via TOs. Both master agreements and TOs must be registered to be legally implemented.

The City may use a master agreement and TO framework when it is unclear how frequently the good or service may be needed. Agencies can issue a task order to an awarded vendor under the terms of a registered master agreement on an as-needed basis. This framework can enable City agencies to jointly realize cost savings by volume that would not otherwise be accessible if the good or service was procured by a single agency via a general contract. Master awards can also be awarded to multiple vendors, so that agencies can procure services through a “mini-bid” or “mini-proposal” competition, or on a rotational basis.⁷⁰

Purchase Orders

Purchase Orders (PO) are an official document of the City notifying the successful vendor of the authority to supply goods or services. A PO formalizes a purchase transaction with a vendor at or below small purchase limits unless the order is being placed against an existing contract.⁷¹ Agencies approve purchase orders for a good or service at a given value, and then issue payments up to that maximum value as the good or service is provided.

Common PO classifications include:

⁶⁹ The data provided in this section is limited to TOs/CTA1s issued pursuant to master agreements registered using the Transaction Code “MMA1.” It does not include instances where agencies purchase goods using a Direct Order (“DO”) issued through agreements registered using the Transaction Code “MA1.”

⁷⁰ PPB Rules §3-02(t), (j)).

⁷¹ PPB Rules §1-01

- PODs (Commodity Purchase Orders - Micropurchases) – typically limited to \$20K;
- POC (Commodity Purchase Orders – Small Purchases) – typically limited to \$20K; and
- PCC1s (Commodity Purchase Orders - Small Purchase Construction) – typically limited to \$35K.

II. Public Resources

Checkbook NYC

In July of 2010 the Comptroller’s Office launched Checkbook NYC, an online transparency tool that for the first time placed the City’s day-to-day spending in the public domain. Checkbook NYC provides up-to-date information about the City’s financial condition.

Checkbook NYC also contains most of the City’s contract data. This tool enables users to examine data on its “Contracts” tab by fiscal year (or other date ranges), procurement category, contract types, and more.

Helpful Links:

- [Click this link to access Checkbook NYC](#)
- [Click this link to view videos on how to navigate Checkbook NYC’s search functions](#)

PASSPort Public

Procurement and Sourcing Solutions Portal (PASSPort) is the City of New York’s end-to-end digital procurement platform that manages every stage of the procurement process from vendor enrollment to the solicitation of goods and services, to contract registration and management. PASSPort Public refreshes data periodically from PASSPort such that the public can derive insight into the City’s procurement system.⁷²

Helpful Links:

- [Click this link to access PASSport Public](#)
 - [Browse vendors](#)
 - [Browse solicitations](#)
 - [Browse contracts](#)

Agency Procurement Plans (M/WBE, LL63, and Human Services)

Under Local Law 1 of 2013, SBS and the Mayor’s Office of Contract Services (MOCS) are required to publish an annual plan and schedule listing anticipated contracting opportunities for the coming fiscal year. These plans include the following information for each solicitation: the specific

⁷² The information in PASSPort public only represents a portion of total city contracts as the data sourced within PASSPort (Procurement Solutions and Strategic Sourcing Portal) has only been available in the system since January 2020.

type and scale of the services to be procured, the term of the proposed contract, the method of solicitation the agency intends to utilize, and the anticipated fiscal year quarter of the planned solicitation.

Similarly, under Local Law 63 of 2011, MOCS is required to publish a plan and schedule detailing the anticipated contract actions (for certain categories of procurement) of each City agency for the upcoming fiscal year. This requirement applies to contracts valued at more than \$200K providing standard or professional services, including against agency task orders.

Lastly, MOCS also publishes plans reflecting proposed procurements relating to human service programs. This information is collected from, and organized by, city agencies.

Helpful Links:

- [Click this link to view M/WBE Procurement plans by agency](#)
- [Click this link to view LL63 plans by agency](#)
- [Click this link to view Human Service procurement plans by agency](#)

City Record Online

The City Record Online (CROL) is a fully searchable database of notices published in the City Record newspaper which includes but is not limited to: public hearings and meetings, public auctions and sales, solicitations and awards and official rules proposed and adopted by city agencies.

Helpful Links:

- [Click here to access the City Record On Line](#)
- [Click here to view the CROL user manual](#)

III. Appendices

Appendix 1 – New Contract Categories with Corresponding Award Method and Contract Type Codes

Contract Groups	Award Methods	Award Method Codes
Group 1: Competitive Method Contracts	Competitive Sealed Bid Contracts	1, 3
	Competitive Sealed Proposal Contracts	2, 22
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	Determined by Government Mandate Contracts	26
	Discretionary (Line Item) Contracts	12, 38
	Emergency Procurement Contracts	6
	Government-to-Government Contracts	17, 103
	Innovative Procurement Contracts	20
	Intergovernmental Procurement Contracts	25, 62, 251
	Micropurchase Contracts	30
	Negotiated Acquisition Contracts	21, 211
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	Small Purchase Contracts – M/WBE	72
Group 3: Transactions not subject to PPB Rules	Sole Source Contracts	5, 40
	Force Account Contracts	68
	Grant Agreements	51
	Miscellaneous Contracts	18, 99
	Professional Membership Negotiation Contracts	42

Contract Groups	Award Methods	Award Method Codes
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	Subscription Contracts	43
Group 4: Supplemental Contracts	Renewals	10
	Assignments	29
Group 5: Revenue Contracts⁷³	Franchise Agreements	CT - 15
	Concession Agreements	CT - 20
	Revocable Consents	CT - 17
	Corpus Funded agreements	CT - 25
	Other Revenue	CTs – 10, 18

Appendix 2 – Award Method Codes

Award Method Code	FMS Award Method Description
1	COMPETITIVE SEALED BIDDING
2	REQUEST FOR PROPOSAL (RFP)
3	PQVL COMPETITIVE BID LIST
5	SOLE SOURCE
6	EMERGENCY
7	LESSEE NEGOTIATION
10	RENEWAL OF CONTRACT
12	BORO NEEDS/DISCRETIONARY FUND
13	PETITION PRIVATE USE/FRANCHISE
14	CONCESSIONAIRE BY PROCEDURE

⁷³ Since the award methods used to enter into Revenue Actions may overlap with the awards methods listed in the other Contract Group, the transactions in Contract Group No. 5 are identified by FMS Transaction Code RCT1. The subcategories denoted in group 5 reflect contract type categories, rather than award methods.

Award Method Code	FMS Award Method Description
15	RENEWAL FRANCHISE/CONCESSION
17	GOVERNMENT TO GOVERNMENT
18	NON PROCUREMENT TRANSACTION
20	INNOVATIVE PROCUREMENT
21	NEGOTIATED ACQUISITION AND DOE NEGOTIATED SERVICES
22	RFP FROM A PQVL
23	DEMONSTRATION PROJECT
25	INTERGOVERNMENTAL PROCUREMENT
26	DETERMINED BY GOV'T MANDATE
27	ACCELERATED PROCUREMENT
28	BUY-AGAINST
29	ASSIGNMENT
30	MICROPURCHASE - NOT EXCEEDING \$35,000
31	SMALL PURCHASE - ORAL SOLICITA
32	Small Purchase - Written
35	Small Purchase - Publicly Let
36	Small Purchase - RFP
37	Small Purchase - PQVL Comp Bid
38	Micropurchase Council & BP Needs
40	Dept Of Ed Listing Application
41	Cable Service Negotiation
42	Prof. Membership Negotiation
43	Subscription Etc Per PPB
44	Public Utility
45	Small Purchase-Public Utility

Award Method Code	FMS Award Method Description
51	Grants
62	Small Purchase - Intergov't
68	Force Account Negotiation
72	M/WBE Purchase-Not Exceeding \$1m
78	Real Estate Sales And Purchases
79	Watershed Land Negotiation
99	Miscellaneous
100	Small Purch -Subscription Etc
101	Sm. Purchase -Prof. Membership
103	Sm. Purchase - Gov't To Gov't
109	Small Purchase - Info Tech
111	Small Purch - It- 25 K To 100k
112	Sm Purch Goods Services 100k
113	Sm Purch Constr - 50k To 100k
211	Neg Acquisition Extn And DOE Negotiated Services Extn
251	Intergovernmental Procurement Renewal

Appendix 3 – Contract Type Codes

Contract Type Code	Contract Type Description
5	Construction
10	Consultant
15	Franchises
17	Revocable Consents
18	Permits
20	Concessions
25	Corpus Funded
29	Other Expense Contr Or Revenue Relatd
30	Misc Revenue-No Expense
35	Lessee
36	Miscellaneous Property Rental
40	Lessor - Accounting Lines Exist
41	Cable Service
42	Professional Membership
43	Subscriptions
44	Public Utility
45	Requirements
46	Requirements-Goods
47	Requirements-Services
48	Requirements-Construction
50	Work/Labor
51	Supplies/Materials/Equipment
52	Construction Mgmt/Build

Contract Type Code	Contract Type Description
53	Design Build
65	Loans
68	Force Account Agreement
70	Programs
72	Programs (Not Tax Levy Funded)
78	Real Estate Sales And Purchases
79	Watershed Land Acquisition
80	OTI-Requirements Contract (RC)
81	DMS-Requirements Contract (RC)
85	Intra-Agency Fund Agreements
86	Dept Of Ed-Requirement Contract
88	New York City Bond Financing
99	Others

Appendix 4 – Agency Codes

Agency Code	Agency	Agency Short Name	Agency Type
002	Mayoralty	MAYOR	City - Mayoral Agency
003	Board of Elections	BOE	City - Non-Mayoral
004	Campaign Finance Board	CFB	City - Non-Mayoral
008	Office of the Actuary	OTA	City - Non-Mayoral
010	Borough President - Manhattan	MBP	City - Non-Mayoral

Agency Code	Agency	Agency Short Name	Agency Type
011	Borough President - Bronx	BXBP	City - Non-Mayoral
012	Borough President - Brooklyn	BKBP	City - Non-Mayoral
013	Borough President - Queens	QBP	City - Non-Mayoral
014	Borough President - Staten Island	SIBP	City - Non-Mayoral
015	Office of the Comptroller	COMP	City - Non-Mayoral
017	New York City Emergency Management	NCYEM	City - Mayoral Agency
025	Law Department	LAW	City - Mayoral Agency
030	Department of City Planning	DCP	City - Mayoral Agency
032	Department of Investigation	DOI	City - Mayoral Agency
035	New York Research Libraries	NYRL	Other Agency
038	Brooklyn Public Library	BPL	Other Agency
039	Queens Borough Public Library	QBPL	Other Agency
040	Department of Education	DOE	Other Agency
042	City University of New York	CUNY	Other Agency
043	City University Construction Fund	CUCF	Other Agency
054	Civilian Complaint Review Board	CCRB	City - Mayoral Agency
056	New York City Police Department	NYPD	City - Mayoral Agency
057	Fire Department	FDNY	City - Mayoral Agency
063	Department of Veteran Services	DVS	City - Mayoral Agency

Agency Code	Agency	Agency Short Name	Agency Type
068	Administration for Children's Services	ACS	City - Mayoral Agency
069	Human Resources Administration (Department of Social Services)	DSS/HRA	City - Mayoral Agency
071	Department of Homeless Services	DSS/DHS	City - Mayoral Agency
072	Department of Correction	DOC	City - Mayoral Agency
096	Human Resources Administration	DSS/HRA	City - Mayoral Agency
102	City Council	CC or COUNCIL	City - Non-Mayoral
125	Department for the Aging	DFTA	City - Mayoral Agency
126	Department of Cultural Affairs	DCLA	City - Mayoral Agency
127	Financial Information Services Agency	FISA	City - Non-Mayoral
131	Office of Payroll Administration	OPA	City - Non-Mayoral
132	Independent Budget Office	IBO	Other Agency
136	Landmarks Preservation Commission	LPC	City - Mayoral Agency
156	Taxi and Limousine Commission	TLC	City - Mayoral Agency
226	Commission on Human Rights	CCHR	City - Mayoral Agency
260	Department of Youth and Community Development	DYCD	City - Mayoral Agency
312	Conflicts of Interest Board	COIB	City - Non-Mayoral
313	Office of Collective Bargaining	OCB	City - Non-Mayoral

Agency Code	Agency	Agency Short Name	Agency Type
351	Manhattan Community Board # 11	MCB11	City - Non-Mayoral
389	Bronx Community Board # 9	BXCB9	City - Non-Mayoral
486	Brooklyn Community Board # 16	BKCB16	City - Non-Mayoral
493	Staten Island Community Board # 3	SICB3	City - Non-Mayoral
781	Department of Probation	DOP	City - Mayoral Agency
801	Department of Small Business Services	SBS	City - Mayoral Agency
801a	New York City Economic Development Council	EDC	Other Agency
806	Housing Preservation and Development	HPD	City - Mayoral Agency
806a	New York City Housing Authority	NYCHA	Other Agency
810	Department of Buildings	DOB	City - Mayoral Agency
816	Department of Health and Mental Hygiene	DOHMH	City - Mayoral Agency
819	Health and Hospitals Corporation	HHC	Other Agency
820	Office of Administrative Trials and Hearings	OATH	City - Non-Mayoral
826	Department of Environmental Protection	DEP	City - Mayoral Agency
827	Department of Sanitation	DSNY	City - Mayoral Agency
829	Business Integrity Commission	BIC	City - Mayoral Agency
836	Department of Finance	DOF	City - Mayoral Agency
841	Department of Transportation	DOT	City - Mayoral Agency

Agency Code	Agency	Agency Short Name	Agency Type
846	Department of Parks and Recreation	DPR	City - Mayoral Agency
850	Department of Design and Construction	DDC	City - Mayoral Agency
856	Department of Citywide Administrative Services	DCAS	City - Mayoral Agency
857	DCAS Division of Municipal Supply Service	DCAS (DMSS)	City - Mayoral Agency
858	Office of Technology and Innovation	OTI	City - Mayoral Agency
860	Department of Records and Information Services	DORIS	City - Mayoral Agency
866	Department of Consumer and Worker Protection	DCWP	City - Mayoral Agency
901	District Attorney - New York County	DANY	City - Non-Mayoral
902	District Attorney - Bronx County	DABX	City - Non-Mayoral
903	District Attorney - Kings County	DAKINGS	City - Non-Mayoral
904	District Attorney - Queens County	DAQ	City - Non-Mayoral
905	District Attorney -Richmond County	DARICH	City - Non-Mayoral
906	Office of Prosecution – Special Narcotics	OOP-SN	City - Non-Mayoral
998	Transit Authority	TRANSIT	Other Agency