

RULES FOR THE SELECTION OF EMERGENCY CONTRACTORS IN WESTCHESTER COUNTY, NEW YORK

Authority

The Rules which are outlined herein have been established by the Commissioner of the Westchester County Department of Public Works ("Commissioner"), pursuant to the County Executive's policies regarding the solicitation and award of emergency contracts.

The Emergency Contractors List- Format, Criteria for Listings

A. Format of the Emergency Contractors List.

The Emergency Contractors List shall list, in alphabetical order, the contractors, which have been deemed, by the Commissioner, to have qualified for listing on the emergency Contractors List, along with a designation as to the type or types of services which the contractor has been qualified to provide to the County of Westchester on an emergency basis.

B. Qualification.

The Commissioner shall make an initial determination as to whether a particular contractor meets the minimum requirements for qualification and listing on the emergency Contractors List, based upon the following requirements:

1. Proof that the contractor has, to the satisfaction of the Commissioner, successfully performed work for the County of Westchester under a non-emergency contract awarded by the Westchester County Board of Acquisition and Contract pursuant to a formal public bidding process for the type(s) of services: or in the field(s) of expertise, for which the contractor seeks to be listed on the Emergency Contractors List; and
2. Confirmation that the contractor is ready, willing and able to provide emergency services to the County for the type(s) of services, or in the particular field(s) of expertise, for which the contractor has successfully performed contractual services for the County in the past and which serve as the basis for the Commissioner's determination that the contractor is reputable.

C. Disqualification & Removal.

1. Mandatory.

The Commissioner shall remove from the Emergency Contractors List:

- a. Any contractor who indicates to the Commissioner that it is no longer ready, willing or able to provide emergency services to the County; and
- b. Any contractor who fails to supply a proposal for two or more emergency contracts for which the contractor is solicited pursuant to Section 3.0, hereof

2. Discretionary.

a. The Commissioner may, in his reasonable discretion, determine that a contractor is no longer qualified to be listed on the Emergency Contractors List, pursuant to the criteria set forth in subsection (b), below, and may remove such contractor from the Emergency Contractors List in the event that the contractor fails to successfully perform services for the County, pursuant to either an emergency or non-emergency contract with Westchester County, in any field of expertise for which the contractor is listed on the Emergency Contractors List. In such event, the Commissioner may remove the contractor from the list for all purposes and not just with respect to the services for which the unsatisfactory work was performed for the County; or

b. The Commissioner, or his authorized designee, shall consider the totality of the circumstances in determining whether a contractor should be disqualified and removed from the Emergency Contractors List, based upon consideration of following criteria:

- (i) Timeliness of performance of any Westchester County contract;
- (ii) Quality of workmanship in any Westchester County contract;
- (iii) Level of cooperation with County officials in the course of any Westchester County contract; and/or
- (iv) Any other factor or circumstances which could have a material adverse impact on the contractor's ability to perform the work under the emergency contract.

c. In the event that the Commissioner determines that disqualification from the Emergency Contractors List is appropriate, the Commissioner shall notify the contractor of such disqualification and removal, in writing and stating the reasons therefor, within thirty (30) days of such determination.

d. The contractor who is disqualified and removed from the Emergency Contractor's List, in accordance with the procedures outlined herein, shall be entitled to apply for reinstatement at any time. Any such application for reinstatement by a contractor shall contain a statement which establishes good cause for the reinstatement of the contractor to the Emergency Contractors List. Any reinstatement shall be at the discretion of the Commissioner.

D. Maintenance of the Emergency Contractors List

1. The Commissioner, or his authorized designee, shall, in the month of January in even numbered years, undertake to contact all of the contractors on the Emergency Contractors List to determine if each such contractor remains ready, willing, and able to provide emergency services to the County for the type(s) of work, and/or field(s) of expertise for which the Contractor is currently listed; and

2. The Commissioner, or his authorized designee, shall also undertake to contact additional contractors who have provided services to the County of Westchester during the preceding two (2) years to determine if such contractors are ready, willing, and able to provide emergency services to the County of Westchester; and

3. The Commissioner, or his authorized designee, shall also undertake a comprehensive evaluation of the Contractors listed on the Emergency Contractors List to determine if any change should be made to any particular contractors designation on the Emergency Contractors List, including but not limited to: addition or removal of particular type(s) of services, or field(s) of work, for which the particular contractor is qualified to provide services to the County of Westchester and/or disqualification or removal.

4. Thereafter, the Commissioner or his duly authorized designee, shall revise the Emergency Contractors List accordingly, and shall utilize the updated Emergency Contractors List for all future emergency contracts.

5. Nothing herein shall be deemed to limit or preclude the authority of the Commissioner, or his duly authorized designee, to make additions to or deletions from the Emergency Contractors List during the course of any two-year operational period of the Emergency Contractors List.

3.0 Selection Criteria

The following selection criteria and procedures shall apply in all cases where the County of Westchester proposes to award an emergency contract, except in those *cases* where a State or federal agency having jurisdiction over the emergency work requires the use of a particular contractor for remediation of a particular emergency condition.

In those cases where a State or federal agency having jurisdiction over the emergency work merely recommends the use of a particular contractor, such recommendation shall be taken into consideration in conjunction with the application of the procedures outlined herein.

A. In the event of an emergency which requires a contract for emergency services where the scope of work can be immediately defined:

1. a. The Commissioner, or his authorized designee, shall select:
 - (i) one or more contractors listed on the Emergency Contractors List who are qualified to provide the type(s) of services required under the emergency contract and who are currently working at the site of the emergency pursuant to an existing County contract; and/or
 - (ii) one or more contractors listed on the Emergency Contractors List who are qualified to provide the type(s) of services required under the emergency contract and who are uniquely familiar with the site of the emergency and who have performed work at the site of the emergency under a County contract which expired not more than two (2) years prior to the date of the selection of contractors from the Emergency Contractors List, to submit proposals for the emergency contract, provided however that if there are less than three (3) contractors who would be eligible to submit proposals for the emergency contract pursuant to the criteria set forth in (i) and (ii), above, then the Commissioner, or his authorized designee, shall select:

(iii) such additional Contractor(s) from the Emergency Contractors List, in accordance with the random selection process outlined in subsection (C), below, who have been qualified to provide the type(s) of services required under the emergency contract, so that there are a minimum of three (3) qualified contractors who are selected to submit proposals for the emergency contract.

b. All contractors who are selected to submit proposals pursuant to subsection 1(a) above, shall be required to attend a pre-proposal meeting at such time and place as the Commissioner, or his authorized designee, shall designate. In the event that one or more contractors cannot attend the pre-proposal meeting, those contractors shall be disqualified from submitting a proposal for the emergency contract. If such disqualification results in less than three (3) contractors confirming their attendance at the pre-proposal meeting, the Commissioner shall continue to select contractors from the Emergency Contractors List in accordance with the procedure specified in subsection (A)1(a), above., until at least three (3) contractors have confirmed their attendance at the pre-proposal meeting.

c. At the pre-proposal meeting, the Commissioner, or his duly authorized designee, shall inform the selected contractors of the general performance requirements which will apply to the emergency contract based upon: (i) a walk through of emergency site; (ii) proposal pages; and/or (iii) preliminary conceptual specifications, and shall not be required to provide detailed, formalized specifications for the proposed emergency contract. At the conclusion of the pre-proposal meeting, and depending upon the nature of the emergency, the Commissioner or his authorized designee shall either require the issuance of written proposals by the contractors in attendance at the pre-proposal meeting at the conclusion of such meeting or shall specify the date and time by which the selected contractors must issue their written proposals for the emergency contract.

d. Upon the receipt of written proposals from the selected contractors, the Commissioner shall recommend the contractor which provides the lowest overall cost proposal to the Westchester County Board of Acquisition and Contract for contract award, provided however, that the Commissioner shall be entitled to obtain a written confirmation from such contractor that the standards required by the Commissioner for the performance of such emergency contract will be met at the quoted proposal price.

e. The failure of any contractor to issue a proposal within the time frames established by the Commissioner, or *his* duly authorized designee, after attending the pre-proposal meeting, shall constitute a failure to supply a proposal in accordance with Section 2.0(C)(3) of these Rules.

B. Special Circumstances Emergency Contracts. In the event of an emergency where, in the reasonable discretion of the Commissioner, the specifications for the emergency contract cannot be immediately defined due to the nature of the emergency, and where the services of an emergency contractor is required for the development of the specifications for the work to be completed in order to remedy the emergency situation, in addition to the work which will be required to remedy the emergency situation ("Special Circumstances Emergency Contract") the following procedures shall apply:

1. a. The Commissioner, or his authorized designee, shall select:
 - (i) one contractor listed on the Emergency Contractors List who is qualified to provide the type(s) of services required under the Special Circumstances Emergency Contract and who is currently working at the site of the emergency pursuant to an existing County contract; or
 - (ii) one contractor listed on the Emergency Contractors List who is qualified to provide the type(s) of services required under the Special Circumstances Emergency Contract and who is uniquely familiar with the site of the emergency and has performed work at the site of the emergency under a County contract which expired not more than two (2) years prior to the date of the selection of the contractor from the Emergency Contractors List, to issue a proposal for the Special Circumstances Emergency Contract, the scope of which shall include the development of specifications for the emergency contract as well *as* the emergency work which is to be outlined in those specifications, provided however that if there are no contractors who would be eligible to submit proposals for the Special Circumstances Emergency Contract pursuant to the criteria set forth in (i) and (ii), above, then the Commissioner, or his authorized designee, shall select:

(iii) one Contractor from the Emergency Contractors List, in accordance with the random selection process outlined in Section (C), below, who has been qualified to provide the type(s) of services required under the Special Circumstances Emergency Contract.

b. After the Commissioner, or his authorized designee, has obtained a proposal from a qualified contractor for the Special Circumstances Emergency Contract in accordance with the procedures outlined above, he shall recommend the contractor to the Board of Acquisition and Contract for the award of the Special Circumstances Emergency Contract specifying the terms of such proposal.

c. The failure of any contractor to issue a proposal for a Special Circumstances Emergency Contract, within the time frames established by the Commissioner, or his duly authorized designee, after selection in accordance with subsection B(1)(a), above, shall disqualify the contractor from the award of such contract, and shall constitute a failure to supply a proposal in accordance with Section 2.0(C)(3) of these Rules.

C. Random Selection from Emergency Contractors List

1. In all such cases where the Commissioner, or his authorized designee, is required to select a contractor randomly from the Emergency Contractors List, the Commissioner, or his authorized designee, shall select such contractor in accordance with the following process:

The Commissioner, or his authorized designee, shall make such selection or selections randomly from the group of contractors on the Emergency Contractors List who have been qualified to provide the particular type of service(s) which is/are required for that particular emergency contract, and shall continue such random selections from that group of qualified contractors as may be required for a particular emergency contract in accordance with these Rules.

2. Thereafter, any contractor which is awarded an emergency contract, whether such contractor's selection to provide a proposal for same was initially due to the contractor's experience on the site of the emergency in accordance with these Rules or as the result of the random selection process outlined in subsection C(1), above, shall not be solicited to provide a proposal for any further emergency contracts, respecting the type of service(s) for which the contractor was awarded the previous emergency contract, until such time as all other contractors from the group of contractors on the Emergency Contractors List who have been qualified to provide the particular type of service(s) have been solicited to provide a proposal for an emergency contract to be awarded by the County of Westchester.