October 31, 2019

Hon. Scott Stringer
Comptroller
1 Centre Street, Ste 530
New York, NY 10007

Mr. Dean Fuleihan
First Deputy Mayor
City Hall
New York, NY 10007

Mr. Phillip Thompson
Deputy Mayor for Strategic Policy Initiatives
City Hall
New York, NY 10007

Mr. Daniel Symon
Director & Chief Procurement Officer
Mayor’s Office of Contract Services
253 Broadway, 9th Floor
New York, NY 10007

Mr. Jonnel Doris
Director & Senior Advisor
Mayor’s Office of Minority and Women Owned Business Enterprises
City Hall
New York, NY 10007

Dear Comptroller Stringer, First Deputy Mayor Fuleihan, Deputy Mayor Thompson, Director Symon, and Director Doris:

The American Council of Engineering Companies of New York (ACEC New York) recently received notice that the Procurement Policy Board (PPB) is proposing amendment to the PPB rules in relation to bids, proposals and purchases from MWBEs. Among the changes to PPB rules, the rule proposes: “In ranking proposers for construction-related consultant services by technical merit, agencies must, except with the approval of the CCPO, provide a point preference of five percent (5%) of the total technical points earned in the evaluation of its proposal to all vendors that are M/WBEs or State-certified M/WBEs before ranking proposers by technical merit. The point preference percentage, if any, shall be included in the RFP.”

On behalf of our members, we oppose this proposal.

This change would provide a 5%-point preference to the technical rankings of proposers for one sector of the construction-related services industry which includes professional design services. This change to the PPB rules is contrary to the city’s current procurement policy for professional design services, known as Qualifications-Based Selection (QBS).

With QBS, the procuring agency selects the number one technically ranked firm, the firm then submits the cost proposal and the agency evaluates and negotiates the cost with the selected design professional based on knowledge of the cost of such services. Under QBS, agencies select firms from which to procure engineering and architectural services based upon firm experience, qualifications, capacity and skill. The proposed PPB rule change would establish a new, non-technical factor (gender and race) as part of the basis for the selection of design firms going forward. In effect, City policy would no longer be to select the firm with the best credentials and approach. No provision of state or local law requires such a deviation from best practices, particularly without study of what a change would accomplish. The
outcome could result, particularly for the largest contracts, with proposals by a very limited number of firms with the size to perform them, where only a small number of certified firms would be able to compete, be advantaged. In this case, this limited number of firms would then have to perform on multiple contracts simultaneously, creating questions about capacity that QBS was intended to avoid. A firm whose proposal was not ranked first because of limited managerial or professional capacity could now be ranked first on numerous projects simultaneously, further stressing the factor which had prevented them from being ranked first initially.

In 2005 a MOCS report summarized the City’s findings with respect to QBS (see attached). The City found using QBS successfully expanded competition and attracted firms who had no prior contracts with the City. The City found with “the presence of such a large pool of consultants from which to select, the likelihood of design excellence increased.” Subsequently, in 2006, the PPB adopted QBS as the method for selecting design professionals for city construction projects. QBS is used by the federal government and 44 states.

ACEC New York supports a robust MWBE program. Many of our member firms are MWBEs. Nevertheless, as QBS is a nationwide priority and principal of the professional design industry, we have a number of observations, questions and concerns related to the city’s departure from using QBS for design and construction services.

Given that this proposal was not included in the PPB’s regulatory agenda for this fiscal year and the recently concluded Disparity Study did not make any findings that race or gender played any role in the technical evaluation of proposals, we are writing to request that the PPB defer the November 12th hearing on this rule change until ACEC New York has an opportunity to meet with you, or alternatively, withdraw the proposed amendment until the PPB has had the opportunity to evaluate the effects of Local Law 174 of 2019, which set goals after the Disparity Study was completed.

Sincerely,

[Signature]

Jay Simson
President & CEO

Attachment

Cc: Procurement Policy Board
Alexandros Hatzakis, Member and Chair (COO, FPWA)
Lisa Flores, Member (Deputy Comptroller for Contracts and Procurement)
Dustin Saldarriaga, Member (Associate Counsel, Office of the Mayor)
Arva Rice, Member (President, New York Urban League)
Sergio Paneque, Member (President, NewGov Strategies, LLC)