PROCUREMENT POLICY BOARD

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing?

The Procurement Policy Board ("PPB") proposes to amend the Rules of the City of New York as follows:

- The PPB proposes to harmonize the definitions of “VENDEX” and “PASSPort” by amending Chapter 1 of Title 9 of the Rules of the City of New York.

- The PPB proposes to amend Chapter 2 of Title 9 of the Rules of the City of New York to require PASSPort enrollment for vendors with contracts and subcontracts, the value of which, when aggregated with the values of all other contracts, subcontracts franchises or concessions awarded to the vendor during the immediately preceding twelve-month period, is greater than or equal to $250,000. The current dollar threshold is equal to $100,000.

- The PPB proposes to amend Chapter 2 of Title 9 of the Rules of the City of New York to change the current policy that requires City agencies to submit a hard copy of a contract's ink (i.e. "wet") signature page as part of their registration packages.

- The PPB proposes to amend Chapter 3 of Title 9 of the Rules of the City of New York to expand opportunities in City procurement for Minority and Women Owned Business Enterprises ("M/WBEs"). This rule amendment will create a new type of small purchase mechanism, known as an "M/WBE Noncompetitive Small Purchase." The M/WBE Noncompetitive Small Purchase mechanism will allow agencies to make purchases of goods and services from MWBEs without competition in amounts not exceeding $150,000.

- The proposed PPB rule also includes some minor plain language changes to the sections described above.

When and where is the hearing? The PPB will hold a public hearing on the proposed rule. The public hearing will take place at 9:00am on July 19, 2018. The hearing will take place in the Spector Hall hearing room of 22 Reade Street, New York, New York 10007.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- Website. You can submit comments to the PPB through the NYC rules website at http://rules.cityofnewyork.us.

- Email. You can email comments to ppb@mocs.nyc.gov.

- Mail. You can mail comments to:

  Attn: Procurement Policy Board  
  Mayor’s Office of Contract Services
• **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212)788-0010 or emailing ppb@mocs.nyc.gov. You can also sign up in the hearing room before the hearing begins on July 19, 2018. You can speak for up to three minutes.

**Is there a deadline to submit comments?** The deadline to submit written comments will be Wednesday July 17, 2018.

**What if I need assistance to participate in the hearing?** You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212)788-0010 or by email at ppb@mocs.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Wednesday, July 16, 2018.

This location has the following accessibility option(s) available: Wheelchair accessibility.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at http://rules.cityofnewyork.us/. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a transcript of hearing regarding the proposed rule will be available to the public at Mayor’s Office of Contract Services, 253 Broadway, 9th Floor, New York, NY 10007.

**What authorizes PPB to make this rule?** Sections 1043 and Section 311 of the City Charter authorize the PPB to make this proposed rule. This proposed rule was included on the PPB’s regulatory agenda; however, the portion of the proposed rule regarding the City Comptroller’s acceptance of “copies” of contracts was not referenced on the regulatory agenda because it was not contemplated when the regulatory agenda was published.

**Where can I find the PPB’s rules?** The PPB’s rules are in Title 9 of the Rules of the City of New York.

**What laws govern the rulemaking process?** The PPB must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.
Statement of Basis and Purpose of Proposed Rule

- Rule changes relating to PASSPort threshold escalation and terminological change (§§ 1-5). This amendment to the Procurement Policy Board Rules (“PPB Rules”) increases the dollar threshold for mandatory PASSPort enrollment for vendors doing business with the City of New York. This PPB Rules amendment also seeks to clarify the nomenclature used to describe the electronic vendor record system established pursuant to Section 6-116.2(b) of the New York City Administrative Code.

- Rule changes relating to copies of registered contracts (§ 6). This amendment to the PPB Rules permits the Comptroller to accept reproductions of signature in lieu of original ink signatures. The New York City Charter requires only that “a copy” of a contract or agreement be filed with the Comptroller for the purposes of contract registration. See NYC Charter § 328. The PPB Rules, which apply to the vast majority of City contracts, however, require that an “original executed contract” “…be submitted for each item required to be registered.” See PPB Rules § 2-12. This proposed change to the PPB Rules is consistent with applicable New York laws governing electronic contracts and signatures, the admissibility of reproductions in a court of law, and current trends favoring increased acceptance of electronic records.

- Creation of an “M/WBE Noncompetitive Small Purchase” mechanism (§ 7). This amendment to the PPB Rules creates a new subtype of small purchase, known as an “M/WBE Noncompetitive Small Purchase.” The M/WBE Noncompetitive Small Purchase mechanism allows agencies to make purchases of goods and services from Minority and Women Owned Business Enterprises (“M/WBEs”) in amounts not exceeding $150,000 without competition. Pursuant to the authority set forth in New York City Charter Section 311(i)(1), added by Chapter 504 of the Laws of 2017, this amendment also creates a separate small purchase threshold for M/WBE Noncompetitive Small Purchases.

The PPB’s authority for these rules is found in section 311 of the New York City Charter.

New material is underlined.
[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The definition of “VENDEX”, appearing alphabetically in Subdivision (e) of Section 1-01 of Chapter 1 of Title 9 of the Rules of the City of New York, is amended to read as follows:

VENDEX. A [computerized citywide system providing comprehensive contract management information] term referring to the PASSPort portal and database.
Section 2. Section 1-01 of Chapter 1 of Title 9 of the Rules of the City of New York is amended to add a new definition of “PASSPort”, appearing in alphabetical order, to read as follows:

**PASSPort.** A computerized citywide system providing comprehensive contract management information.

Section 3. The definition of “Contract”, appearing alphabetically in Paragraph (1) of Subdivision (e) of Section 2-08 of Chapter 2 of Title 9 of the Rules of the City of New York, is amended to read as follows:

**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, construction, or construction-related services, is awarded to a sole source, and is valued at $10,000 or more.

Section 4. Paragraph (2) of Subdivision (e) of Section 2-08 of Chapter 2 of Title 9 of the Rules of the City of New York, is amended to read as follows:

(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. [In the event that] 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 Rule 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 [$100,000] $250,000, and

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

(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 [$100,000] $250,000.

Section 5. Subparagraph (ii) of Paragraph (8) of Subdivision (e) of Section 2-08 of Chapter 2 of Title 9 of the Rules of the City of New York, is amended to read as follows:

(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 [$100,000] $250,000.

Section 6. Paragraph (1) of Subdivision (c) of Section 2-12 of Chapter 2 of Title 9 of the Rules of the City of New York, is amended to read as follows:

(c) Documentation. The following documentation shall be submitted for each item required to be registered:

(1) a copy of the original executed contract and related contract budget;

Section 7. Section 3-08 of Chapter 3 of Title 9 of the Rules of the City of New York, is amended to read as follows:

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 $150,000. 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 [Questionnaire]
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 [$ 100,000, $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.

(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 MWBE vendors. Documentation of such purchases
must identify the vendor the item was purchased from, the item
purchased, and the amount paid.

(iii) **Small Purchases**. [For] 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) **MWBE Noncompetitive Small Purchases**. No competition is
required for the procurement of goods and services from MWBE
vendors, except that in making purchases pursuant to this
subparagraph, the Contracting Officer must ensure that the
noncompetitive price is reasonable and that purchases are distributed
appropriately among responsible MWBE vendors. Agencies shall not
use this subparagraph to make any purchase the value of which is less
than or equal to $20,000 or to make any purchase the value of which
exceeds $150,000. Additionally, agencies shall not make purchases
pursuant to this subparagraph for human services or construction.
(2) Solicitation Methods and Use. For [small purchases of particular goods and all services except construction valued at more than $20,000 and small purchases of construction valued at more than $35,000] 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. [Small purchases for goods and all services except construction valued at over $20,000 or small purchases for construction valued at over $35,000] 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.

(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 [PIN] 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 [(if applicable)];

(10) quotations and notations pertaining to oral bid solicitations [(if applicable)];
(11) written bids and offers [(if applicable)];

(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.
CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: MWBE Noncompetitive Small Purchase Provisions

REFERENCE NUMBER: 2018 RG 058

RULEMAKING AGENCY: Procurement Policy Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

(i) is drafted so as to accomplish the purpose of the authorizing provisions of law;

(ii) is not in conflict with other applicable rules;

(iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and

(iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN Date: June 11, 2018
Acting Corporation Counsel
CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: MWBE Noncompetitive Small Purchase Provisions

REFERENCE NUMBER: MOCS-18

RULEMAKING AGENCY: Procurement Policy Board

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

(i) Is understandable and written in plain language for the discrete regulated community or communities;

(ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and

(iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor’s Office of Operations  
June 11, 2018  
Date