

NOTICE OF ADOPTION OF RULE

Pursuant to the authority vested in the Procurement Policy Board by Section 311 of the New York City Charter (“Charter”) and in accordance with the requirements of Section 1043 of said Charter, the Procurement Policy Board has adopted amendments to Chapter 1, Chapter 2, and Chapter 3 of Title 9 of the Rules of the City of New York. The amendments were published in the City Record on June 18, 2018, and a supplemental notice was published on July 6, 2018. A public hearing was held on July 19, 2018. The amendments were adopted by the Procurement Policy Board on September 27, 2018. This rule will go into effect on November 5, 2018.

STATEMENT OF BASIS AND PURPOSE OF 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 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.

The Rule Amendments

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 [\$100,000] \$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 [limits] 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 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.* [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 [limits] 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 and services from M/WBE 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 M/WBE 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.

Section 8. This rule takes effect on November 5, 2018.