

Procurement Policy Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Procurement Policy Board (PPB) is proposing changes to the PPB Rules to align the dollar threshold of the Minority and Women Owned Business Enterprise Noncompetitive Small Purchase Mechanism with recent changes to the New York City Charter.

When and where is the hearing? The PPB will hold a public hearing on the proposed rule. The public hearing will take place on April 14, 2023, at 1:00 PM. The hearing will be at 255 Greenwich, 9th Floor in the Borough of Manhattan.

The public may also access and participate in the hearing via Internet or telephone.

- To join the public hearing via Internet, please follow the meeting link:
<https://nycmocs.webex.com/nycmocs/j.php?MTID=m6dceea1b5e0952b13870bb94bd74d658>.

Meeting Number: 2340 278 3380

Meeting Password: jjBS3PuAq23 (55273782 from phones)

- To join the public hearing via telephone, please dial:
+1-646-992-2010 United States Toll (New York City)
+1-408-418-9388 United States Toll

Access code: 234 027 83380

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
255 Greenwich, 9th Floor
New York, NY 10007

- **By speaking at the hearing (in person).** 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 emailing ppb@mocs.nyc.gov, or calling (212) 298-0624. You can also sign up in the hearing room or via the meeting link, above, before the hearing begins on April 14, 2023. While there will be an opportunity during the hearing to indicate that you would like to comment, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? The deadline to submit written comments will be April 14, 2023.

What if I need assistance to participate in the hearing? You must notify the Disability Service Facilitator if you need a reasonable accommodation of a disability at the hearing, including, but not limited to, a sign language interpreter. You can contact the Disability Service Facilitator by email at DisabilityAffairs@mocs.nyc.gov, by telephone at (212) 298-0734 or by mail at the address provided above with an attention line to “Disability Service Facilitator.” Advance notice is requested to allow sufficient time to arrange the accommodation. Please notify the Disability Service Facilitator at least five (5) business days in advance of the hearing.

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 regarding the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Within a reasonable time after the hearing, copies of all written comments and a summary of oral comments concerning the proposed rules will be available to the public on MOCS’ website at <https://www.nyc.gov/site/mocs/legal-forms/transcripts-and-reports.page> and at MOCS’ office located at 255 Greenwich, 9th Floor, New York, NY 10007.

What authorizes the PPB to make these rules? Sections 1043 and 311 of the New York City Charter authorize the PPB to make the proposed rules. This proposed rule was not included in the PPB’s regulatory agenda for this Fiscal Year because it was not contemplated when the PPB published its agenda.

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 New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the New York City Charter.

Statement of Basis and Purpose of Proposed Rule

The Minority and Women-Owned Business Enterprise (M/WBE) Noncompetitive Small Purchase procurement method set forth in Procurement Policy Board (PPB) Rule § 3-08 allows agencies to award contracts up to a certain dollar amount for goods, professional services, standard services and construction directly to M/WBEs without formal competition.

This year, the Governor signed legislation that increases the dollar threshold for the M/WBE Noncompetitive Small Purchase mechanism from \$500,000 to \$1,000,000.

Section one of this proposed rule would amend the definition for the term “small purchase limit” by replacing the \$500,000 dollar threshold currently listed in PPB Rule § 3-08(a) with a cross reference to section 311(i)(1) of the New York City Charter (Charter).

Section two of this proposed rule would make a corresponding edit amending the scope of applicability of the M/WBE Noncompetitive Small Purchase mechanism in PPB Rule § 3-08(c)(1)(iv).

The purpose of this proposed amendment to the PPB Rules is twofold: (1) to allow agencies to use the M/WBE Noncompetitive Small Purchase mechanism to make purchases not in excess of \$1,000,000, in order to address the continuing effects of discrimination on M/WBEs in the market where the City conducts its procurements; and (2) to allow the PPB Rules to automatically align with the dollar threshold featured in the Charter, in the event of any future statutory changes to such threshold.

This proposed rule amendment would exercise authority granted to the City by Chapter 569 of the Laws of 2022 and codified in section 311(i)(1) of the Charter.

Proposed Rule Change

Please note that new material added in the text of the proposed rule is underlined and the 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. SUBDIVISION (a) OF SECTION 3-08 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(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 [\$500,000] 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.

§ 2. SUBPARAGRAPH (iv) OF PARAGRAPH (1) OF SUBDIVISION (c) OF SECTION 3-08 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(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 [\$500,000] 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.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Governing Minority and Women Owned Business Enterprise Noncompetitive Small Purchase Mechanism

REFERENCE NUMBER: 2023 RG 002

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
Senior Counsel

Date: March 3, 2023

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Rules Governing Minority and Women Owned Business
Enterprise Noncompetitive Small Purchase Mechanism**

REFERENCE NUMBER: MOCS-21

RULEMAKING AGENCY: Mayor's Office of Contracts

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

March 6, 2023
Date