

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 change the name of the M/WBE non-competitive small purchase procurement method.

When and where is the hearing? The PPB will hold a public hearing on the proposed rule. The public hearing will take place on Tuesday, July 30, 2024, at 12:30 PM. The hearing will be at 255 Greenwich St, 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://teams.microsoft.com/l/meetup-join/19%3ameeting_M2MxNzZhMWUtODgwMy00NzU1LThmYTAAtNGIxZmIwMjZmODJm%40thread.v2/0?context=%7b%22Tid%22%3a%2232f56fc7-5f81-4e22-a95b-15da66513bef%22%2c%22Oid%22%3a%2216bb80d0-b04e-477a-80a7-d8f84b9d9e66%22%7d

Meeting Number: 261 161 334 407

Meeting Password: r9oCCY

- To join the public hearing via telephone, please dial: +1 646-893-7101,,239729642#

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 St, 9th Floor
New York, NY 10007

- **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 emailing ppb@mocs.nyc.gov, or calling (212) 298-0800. 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. Please note that the hearing is for accepting oral testimony only and is not held in a "Question and Answer" format.

Is there a deadline to submit comments? The deadline to submit written comments will be July 30, 2024.

What if I need assistance to participate in the hearing? You must tell 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) 298-0743 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 on 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/regulations/ppb.page> and at MOCS’ office located at 255 Greenwich St, 9th Floor, New York, NY 10007.

What authorizes the PPB to make these rules? Sections 311, 314, and 1043 of the New York City Charter authorize the PPB to make the proposed rules. This proposed rule was included in the PPB’s regulatory agenda for this Fiscal Year.

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 Rules

These proposed Procurement Policy Board (PPB) Rule amendments would update the provisions of the PPB Rules relating to “M/WBE Noncompetitive Small Purchases.”

The PPB is proposing amendments to PPB Rule § 3-08(c)(1)(iv) to rename the “M/WBE Noncompetitive Small Purchases” to “M/WBE Small Purchases.”

Section 1 would amend PPB Rule § 3-08(c)(1)(iv) to rename the “M/WBE Noncompetitive Small Purchases” to “M/WBE Small Purchases” to provide greater clarity regarding this procurement method. While competition is not required for contracts awarded pursuant to this method, agencies often do utilize various forms of source selection in connection with M/WBE small purchase contracts to promote competition and in the best interests of the City. Renaming this method will reduce confusion amongst vendors and potential vendors regarding whether to expect potential competition in connection with contracts awarded through this method.

Additionally, changing “except” to “provided” in the first sentence of § 3-08(c)(1)(iv) will clarify that when making M/WBE small purchases pursuant to such provision agencies are required to attempt to obtain at least three price quotes from M/WBE vendors or document their inability to do regardless of whether a procurement includes competition.

The PPB’s authority to promulgate these rules is found in sections 311, 314, and 1043 of the New York City Charter.

On June 4, 2024, the PPB voted to initiate the rulemaking process under the Citywide Administrative Procedure Act for this proposed rule amendment.

The new material added in the text of the 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. SUBPARAGRAPH (iv) of PARAGRAPH (1) OF SUBDIVISION (c) OF SECTION 3-08 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] provided 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 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 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 Relating to M/WBE Small Purchases

REFERENCE NUMBER: PPB-5

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 12, 2024
Date

**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 Relating to M/WBE Small Purchases

REFERENCE NUMBER: 2024 RG 055

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: June 12, 2024