

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 PPB Rule 3-11: Demonstration Projects. The proposed changes would expand the scope of demonstration projects to include challenge-based procurements. Challenge-based procurements encourage and foster innovation by asking respondents to address a challenge rather than provide a specified product or service. Through this process, the City can test, evaluate, and analyze one or more approaches to solving a defined problem, and then implement a solution that proves effective.

When and where is the hearing? The PPB will hold a public hearing on the proposed rule. The public hearing will take place Wednesday, August 28, 2024, at 3:00 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_YmJkNzVIYjItMWI1NS00OTA2LTlkNGYtYzM5ODY1ZjYyYzIx%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: 233 719 273 448

Meeting Password: kFSnZ9

- To join the public hearing via telephone, please dial: +1 646-893-7101,,294568229#

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) 298-0624. 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 August 28, 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 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 Rule

This proposed Procurement Policy Board (PPB) rule amendment would expand the Rule governing demonstration projects and include reference to challenge-based procurements.

The PPB is proposing amendments to PPB Rule § 3-11 to specifically allow the use of challenge-based procurements, to extend the maximum allowable term of a contract for a demonstration project, and to allow agencies to use other procurement methods to secure additional products or continued services after the conclusion of the demonstration project.

Section 1 of this proposed rule would amend PPB Rule § 3-11 to expand the use of demonstration projects and to specifically provide for challenge-based procurements. The Rule currently limits the ability to use demonstration projects for existing services to the client services industry (3-11(a)), (3-11(f)). This limitation prevents other critical City programs from soliciting novel solutions to the challenges they face. This amendment would also remove the language indicating that a contract to acquire more of the good or service tested in the demonstration project contract must be awarded “competitively” (3-11(c)(5)), (3-11(i)). This language is being removed and additional language is being added in order to clarify that such contracts may be awarded through any method of source selection permitted under Chapter 3 of the PPB Rules. Some agencies had previously misinterpreted the rule as limiting the available solicitation methods to competitive sealed bids and competitive sealed proposals. This rule would also amend section 3-11(d) to extend the maximum term for which an agency can extend a contract for a demonstration project with CCPO approval, from one year to three years. This change will allow additional time for evaluating the feasibility and application of innovative products, services, or solutions, which is often necessary given the scale and complexity of the City’s needs.

This amendment would add a subdivision (j) to PPB Rule §3-11. This subdivision will allow agencies to award contracts for demonstration projects using a challenge-based solicitation, which defines a challenge that the City faces and asks respondents to propose solutions, rather than defining the specific solution, product, or service that the City would like a vendor to provide. This new subdivision will also allow the City to simultaneously test multiple proposed solutions to the same challenge, utilize the extended potential maximum term to test the effectiveness of one or more solutions more fully, and then to use other permissible procurement methods to implement one or more solutions that prove most effective. This provision highlights an approach to procurement that encourages innovators to partner with the City to solve problems. It also allows the City to observe whether a proposed solution meets its needs before investing in a product or service on a large scale. It also provides a clearer, more streamlined pathway from successful pilot to scaled up implementation, ensuring that the City can quickly implement new innovations and that innovators and entrepreneurs are encouraged and incentivized to do business with the City.

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The PPB’s authority to promulgate this rule is found in sections 311 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 agency, unless otherwise specified or unless the context clearly indicates otherwise.

SECTION 1. SECTION 3-11 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

Section 3-11 DEMONSTRATION PROJECTS FOR INNOVATIVE PRODUCTS, APPROACHES, OR TECHNOLOGIES

(a) **Policy and Purpose of Demonstration Projects.** It is in the City’s best interest to consider proposals for demonstration projects. A demonstration project is a short-term, carefully planned, pilot exercise designed to test and evaluate the feasibility and application of an innovative product, approach or technology not currently used by the City. Demonstration projects may be proposed for goods, services or construction. They allow the City to observe and analyze effectiveness and efficiency without a large commitment of resources. Demonstration projects may be initiated by an unsolicited proposal, or by an agency on its own initiative. [For client services programs, agencies] Agencies may also opt to initiate a demonstration project in order to invite proposals for innovative approaches to the provision of existing or new services.

(b) **Preliminary Discussions.** An agency may engage in preliminary discussions with a vendor to explore the feasibility of a proposed demonstration project. Discussions are not negotiations for the award of a contract. A summary of these discussions shall be disclosed in the presolicitation review report.

(c) **Determination.** Prior to entering into negotiations for the award of a contract for a demonstration project, the ACCO shall make a determination stating that:

- (1) testing or experimentation is advisable to evaluate the service or reliability of the product, approach, or technology;
- (2) the product, approach, or technology cannot be reasonably acquired for evaluation through a competitive solicitation or there are other potential advantages to the City for using this method of source selection;
- (3) the product, approach, or technology is not currently in use in City government;
- (4) the results of the demonstration project shall be documented and made publicly available upon its conclusion;
- (5) there is an intent to [competitively] acquire the product, approach, or technology if, after testing and evaluation, a decision is reached to continue its use within the City; and

(6) any outside funding relied upon to justify the award of the contract pursuant to this section has been documented.

(d) Contract Term. The initial term of a contract for a demonstration project should be for a term that is reasonable both to conduct the demonstration and to determine its effectiveness and shall not exceed three years. The ACCO shall make a determination setting forth with specificity how the proposed term of the contract was determined. In making such determination, the ACCO may consider whether it would be in the City's best interest to ensure that no break in the provision of services occurs at the end of the demonstration project, if successful. If the ACCO makes such a determination, the ACCO should establish an initial term that, although no longer than three years, is long enough to allow for the subsequent solicitation of those services at the conclusion of the project's evaluation using one of the methods of source selection authorized by these Rules. In the event that a longer period is needed to allow for continuity of services and/or to evaluate the demonstration, the agency may extend the contract for an additional period of up to [one year] three years with CCPO approval, provided such extension is only so long as necessary to allow for continuity of services or to evaluate the demonstration.

(e) Notice. Prior to entering into negotiations for the award of a contract for a demonstration project exceeding the small purchase limits, the ACCO shall give notice of that determination by placing a notice in the City Record.

(1) Frequency. Notice of intent to enter negotiations for a demonstration project exceeding the small purchase limits shall be published in not less than five consecutive editions of the City Record at least ten calendar days before entering into negotiations with the vendor and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication.

(2) Content. Such notice shall include:

(i) agency name;

(ii) PIN;

(iii) title and/or brief description of the goods, services, or construction to be procured;

(iv) estimated quantity, if any;

(v) name of the proposed vendor, if the agency has identified a vendor;

(vi) summary of the determination;

(vii) how vendors may express their interest in providing such good, services or construction; and

(viii) due date.

(f) Evaluation. Upon the evaluation of expressions of interest received, if any, the ACCO shall make a determination of how to proceed, which includes the basis for such determination. Where it appears that the product, approach, or technology is already competitively available in the marketplace, the ACCO may determine that a competitive solicitation may be issued; or, if it appears that the product, approach, or technology can be reasonably evaluated using short-term contracts with more than one vendor, the ACCO may determine that negotiations to establish such demonstration projects may be conducted with more than one vendor, or negotiations may proceed with the single vendor originally identified. [For client services, whether] Whether or not an initial vendor has been identified, an agency may utilize the demonstration project method to solicit proposals for innovative approaches to the provision of existing or new services, in which case the ACCO may determine that negotiations to establish such demonstration projects may be conducted with more than one vendor, or negotiations may proceed with the single vendor originally identified, if any. To the extent required by Section 322 of the Charter, an agency determination to utilize an alternative procurement procedure for a particular procurement or for a particular type of procurement shall require the approval of the Mayor prior to seeking bids or proposals. The CCPO shall have final authority with respect to evaluation, acceptance, and rejection of all demonstration projects.

(g) Negotiations. After completing negotiations, the ACCO shall award the contract or contracts if it is determined that the award or awards will be in the City's best interest and that the price is fair and reasonable.

(h) Notice of Award.

(1) Frequency. Award of contracts exceeding the small purchase limits shall be published once in the City Record, within fifteen calendar days after registration of the contract.

(2) Content. Such notice shall include:

(i) agency name;

(ii) PIN;

(iii) title and/or brief description of the goods, services, or construction procured;

(iv) name and address of the vendor;

(v) dollar value of the contract;

(vi) the date of the published notice of intent to enter into negotiations for the award of a contract for a demonstration project; and

(vii) summary determination of the basis for the demonstration project and availability of the full evaluation.

(i) Conclusion of Demonstration Project. At the conclusion of the contract term, based upon the documented results of the project, the agency shall make a determination,

including the reasons therefor, whether to [competitively] acquire [or to discontinue the use of] the product, approach, or technology using one of the methods of source selection authorized by these Rules.

(j) Challenge-Based Procurement. An agency may issue a solicitation for a demonstration project that defines a challenge or problem and invites proposals for an innovative product, approach or technology to respond to, resolve or otherwise meet that challenge.

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**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: Rules Relating to Challenge-Based Procurement

REFERENCE NUMBER: PPB-3

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: Rules Relating to Challenge-Based Procurement

REFERENCE NUMBER: 2023 RG 109

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 11, 2024