

Notice of Adoption of Rules

Pursuant to the authority vested in the Procurement Policy Board (PPB) by Sections 311 and 314 of the New York City Charter and in accordance with the requirements of Section 1043 of said Charter, the PPB has adopted amendments to Chapter 3 of Title 9 of the Rules of the City of New York.

Statement of Basis and Purpose of Rules

This Procurement Policy Board (PPB) Rule amends Rule § 3-11 by (1) expanding the use of demonstration projects for existing services beyond client services programs, (2) removing language indicating that a contract to acquire more of the good or service tested in the demonstration project contract must be awarded “competitively” to provide greater clarity to agencies; (3) extending the maximum term for which an agency can extend a contract for a demonstration project with CCPO approval from one year to three years, and (4) adding a subdivision (j) to emphasize the ability of agencies to use the challenge-based solicitation model.

The expansion of the use of demonstration projects for existing services will allow other critical City programs to solicit novel solutions to the challenges they face. Removing the word “competitively” from the portions of the rule relating to the award of contracts following demonstration projects will clarify that a contract to procure a good or service evaluated through a demonstration project may be awarded using any of methods of source selection authorized by the PPB Rules. Some agencies had previously misinterpreted the rule as limiting the available solicitation methods to competitive sealed bids and competitive sealed proposals. Extending the maximum permissible length of extensions of contracts for demonstration projects 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. Further, it will allow the City to observe whether a proposed solution meets its needs before investing in a product or service on a large scale. It will also provide 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. Adding a new subdivision focused on challenge-based procurements highlights the availability of the challenge-based model, which is already available to agencies in multiple settings.

On June 4, 2024, the PPB voted to initiate the rulemaking process under the Citywide Administrative Procedure Act for this proposed rule amendment. A proposed version of this amendment was published in the *City Record* on July 26, 2024. A public hearing was held on August 28, 2024.

The PPB received one written comment and one oral testimony from the same source at the public hearing. Upon careful consideration of the comment and discussion during the June public meeting, the PPB adopted the amendment on September 19, 2024.

The PPB’s authority to promulgate this rule is found in sections 311 and 1043 of the New York City Charter.

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 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 the product, approach, or technology using one of the methods of source selection authorized by these Rules or to discontinue the use of the product, approach, or technology.

(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.

