

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the proposed amendments related to rules concerning micropurchases.

Date / Time: June 4, 2012
3:00pm-5:00pm

Location: 253 Broadway, 14th Floor Conference Room
New York, New York 10007

Contact: Andrea Glick
Director
Mayor's Office of Contract Services
253 Broadway, 9th Floor
New York, New York 10007

Proposed Rule Amendment

Pursuant to the authority vested in the Procurement Policy Board ("PPB") by sections 311 and 1043 of the New York City Charter the PPB hereby proposes to amend Chapter 3 of Title 9 of the Rules of the City of New York ("RCNY").

The proposed amendments were not included in this board's regulatory agenda.

Instructions

Written comments regarding the proposed amendments must be received by close of business on June 4, 2012. Written comments should be sent to:

Jennifer Jones Austin
Chair
Procurement Policy Board
253 Broadway, 9th Floor
New York, New York 10007

or electronically through NYC RULES at www.nyc.gov/nycrules by June 4, 2012.

If you need a sign language interpreter or other form of reasonable accommodation for disability at the hearing, please notify Andrea Glick by close of business on May 29, 2012.

Written comments and a summary of the oral comments will be available for public inspection within a reasonable time after receipt between 9:00 a.m. and 4:30 p.m. at the Mayor's Office of Contract Services.

Statement of Basis and Purpose

The proposed amendment increases the dollar amount below which procurement and award of contracts may be made without competition from \$5,000 to \$20,000, in order to increase micropurchase awards to minority and women-owned business enterprises (M/WBEs). The proposed rule also clarifies that agencies are to include M/WBEs when distributing micropurchase awards amongst responsible vendors. Pursuant to Charter §314 this change will require concurrent action of the New York City Council. The proposed amendment also requires all small purchases of more than \$20,000 to be procured by use of a written solicitation.

The Proposed Rule Amendments

New material is underlined and deletions are [bracketed].

Section 1. Section 3-08 of Chapter 3 of Title 9 of the Rules of the City of New York is amended as follows:

§3-08 Small Purchases

(a) Definition. Small purchases are those procurements in value of not more than \$100,000. This shall be known as 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.

(c) Scope.

(1) Competition Objective.

- (i) Public notice of solicitation and award, presolicitation review report, Recommendation for Award, vendor protests, written notice to the low bidder or offeror of non-responsiveness, VENDEX Questionnaire (unless the 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), and public hearing shall not be required for small purchases awarded pursuant to this section.
- (ii) For procurements the value of which is \$20,000 [\$5,000] or less, no competition is required except that in making purchases below this limit, Contracting Officers shall ensure that the noncompetitive price is reasonable and that purchases are distributed appropriately among

responsible vendors, including M/WBE vendors. Documentation of such purchases shall identify the vendor the item was purchased from, the item purchased, and the amount paid.

- (iii) For procurements in value over \$20,000 [\$5,000] through the small purchase limits, at least five vendors shall 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 shall 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 shall 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.

(2) Solicitation Methods and Use.

- [(i) Agencies shall use the following solicitation methods f]For small purchases valued at more than \$20,000 [\$5,000], agencies shall use :
 - (A) for small purchases of goods valued at not more than \$25,000, an oral or written solicitation describing the requirements, or
 - (B) for small purchases of goods valued at more than \$25,000, a written solicitation describing the requirements, and
 - (C) for small purchases of services,] a written solicitation describing the requirements[.
- (ii) An oral or written solicitation for a small purchase], which shall contain, at a minimum:
 - (i[A]) a description of the item or service requested;
 - (ii[B]) time, date, place, and form of requested response;
 - (iii[C]) basis for award; and
 - (iv[D]) name and telephone number of the Contracting Officer to whom inquiries may be directed.

(d) Award. Small purchases valued at over \$20,000 [\$5,000] 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 shall issue a purchase order or contract, as appropriate, to the successful bidder or offeror.

**NEW YORK CITY LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

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

RULE TITLE: Amendment of Rules Governing Micropurchases (Section 3-08)

REFERENCE NUMBER: 2012 RG 022

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
Acting Corporation Counsel

Date: April 3, 2012

**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 Micropurchases (Section 3-08)

REFERENCE NUMBER: MOCS-2

RULEMAKING AGENCY: MOCS

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 Navarro
Mayor's Office of Operations

April 3, 2012
Date