

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to comment on the proposed amendments related to the procurement policy board rule regarding sole source procurement.

**Date / Time:** September 10, 2013  
11:00am-1:00pm

**Location:** Mayor's Office of Contract Services  
253 Broadway, 14<sup>th</sup> Floor  
New York, New York 10007

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

### **Proposed Rule Amendment**

Pursuant to the authority vested in the Procurement Policy Board ("PPB") by section 311 and in accordance with section 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 the board's most recent regulatory agenda because the amendments were not anticipated at the time the agenda was published.

### **Instructions**

Written comments regarding the proposed amendments must be received by close of business on September 10, 2013. Written comments should be sent to:

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

or electronically through NYC Rules at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) by September 10, 2013.

If you need a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please notify Andrea Glick by close of business on September 3, 2013.

Written comments and a summary of the oral comments will be available for public inspection within seven (7) days 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**

Procurement Policy Board ("PPB") Rule 3-05 currently sets forth the procedures that must be followed for all sole source procurements above \$2,500. Sole source procurement is a method of procurement that is to be used where there is only one source for the required goods, service or construction. PPB Rule 3-05 is being amended to make the sole source procurement rule consistent with recent changes to another PPB Rule, Rule 3-08. PPB Rule 3-08 generally governs small purchases, *i.e.* purchases under \$100,000. Recent amendments to PPB Rule 3-08 changed the amount below which no competition is required for small purchases, from \$5,000 to \$20,000. In order to be consistent with these changes, PPB Rule 3-05 is being amended to increase the threshold above which agencies must follow sole source procurement procedures to \$20,000; above this threshold, agencies must follow the sole source procurement process set forth in Rule 3-05.

Rule 3-05 is also being amended to provide that, for all procurements subject to Rule 3-05, the Agency Chief Contracting Officer ("ACCO") must provide a description of the process used to determine that only one source was available; a description of the efforts made to ensure that offers were solicited from other sources; where applicable, a statement of intended actions to develop competition in future; and must perform a presolicitation review. Previously, some of these requirements only applied to procurements above specified monetary thresholds (\$10,000 or less for goods and services and \$15,000 or less for construction and construction-related services).

### **The Proposed Rule Amendments**

"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.

New material is underlined and deletions are [bracketed].

### **Section 1. Section 3-05 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:**

#### **§3-05 Sole Source Procurement.**

(a) *Conditions for use.* Sole source procurement shall be used only when there is only one source for the required goods, service, or construction. In such case, the accepted price and terms and conditions shall be achieved through negotiation between the agency and the vendor. This section shall apply to all sole source procurements over [~~\$2,500~~] \$20,000.

(b) *Determination.* Prior to entering into sole source negotiations, the ACCO shall make a determination that there is only one source for the required good, service, or construction.

(1) [For sole source procurements of \$10,000 or less for goods and services and \$15,000 or less for construction and construction-related services, s] Such determination shall include a description of the process by which the agency made such determination, [

(2) For sole source procurements above these amounts, such determination shall also include] a description of the efforts made to ensure that offers were solicited from other sources, and where applicable, a statement of intended actions to develop competition in the future. The agency shall also perform a presolicitation review pursuant to §2-02.

[(3)] (2) A copy of the determination shall be forwarded within five (5) days of completion to the Comptroller.

(c) *Public notice.* (1) *Notice of intent to enter into sole source negotiations.* If expressions of interest are received they shall be evaluated and, if it appears that the good, service, or construction is available from more than a single source, a solicitation shall be issued in accordance with Chapter 3 of these Rules.

(i) *Frequency.* After the ACCO determines that this procurement method will be used [for purchases in excess of \$10,000 for goods and services and \$15,000 for construction and construction-related services], notice of the intent to enter into negotiations shall be published in the City Record for five (5) consecutive editions no fewer than ten calendar days before negotiations are expected to begin and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. Such notice shall solicit expressions of interest from vendors qualified to compete on that procurement or in the future. This subdivision shall not apply in cases where Corporation Counsel has provided a written statement that such notice may jeopardize pending litigation or collective bargaining.

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

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

**RULE TITLE:** Sole Source Procurement Threshold

**REFERENCE NUMBER:** MOCS-12

**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/ Ruby B. Choi  
Mayor's Office of Operations

7/26/2013  
Date

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

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

**RULE TITLE:** Sole Source Procurement Threshold

**REFERENCE NUMBER:** 2013 RG 035

**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/ STEPHEN ACKERMAN  
Acting Corporation Counsel

Date: July 26, 2013