

Notice of Adoption of Rule

Pursuant to the authority vested in the Procurement Policy Board by Section 311 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 Final Rule

The Minority and Women-Owned Business Enterprise (M/WBE) Noncompetitive Small Purchase procurement method set forth in Procurement Policy Board (PPB) Rule § 3-08 allows agencies to award contracts up to a certain dollar amount for goods, professional services, standard services and construction directly to M/WBEs without formal competition.

These rule amendments primarily seek to implement recent State Legislation. In 2022, the Governor signed legislation that increases the dollar threshold for the M/WBE Noncompetitive Small Purchase mechanism from \$500,000 to \$1,000,000.

On December 15, 2022, the PPB voted to initiate the rulemaking process under the Citywide Administrative Procedure Act for this rule. A proposed version of these amendments was published in the *City Record* on March 10, 2023. A public hearing was held on April 14, 2023.

The PPB received both written comments and oral testimony at the public hearing. The relevant comments showed support for the rule change. The PPB also received comments and oral testimony on the M/WBE program, which was beyond the scope of this hearing but acknowledged for the record. In addition to the public comments, the PPB also considered its discussions during the December meeting—particularly those discussions pertaining to the City’s interest in maintaining oversight and transparency. Upon careful consideration of all the relevant comments and the PPB’s discussions during the December public meeting, the PPB adopted the amendments on April 27, 2023.

Sections one and three of this rule directly relate to increasing the dollar threshold for the M/WBE Noncompetitive Small Purchase mechanism; sections two and four relate to establishing more robust notice requirements for these procurements.

Section one of this rule amends the definition for the term “small purchase limit” by replacing the \$500,000 dollar threshold currently listed in PPB Rule § 3-08(a) with a cross reference to New York City Charter (Charter) § 311(i)(1). Section three of this rule makes a corresponding amendment to PPB Rule § 3-08(c)(1)(iv).

The purpose of these amendments to the PPB Rules is twofold: (1) to allow agencies to use the M/WBE Noncompetitive Small Purchase mechanism to make purchases not in excess of \$1,000,000, in order to address the continuing effects of discrimination on M/WBEs in the market where the City conducts its procurements; and (2) to allow the PPB Rules to automatically align with the dollar threshold featured in the Charter, in the event of any future statutory changes to such threshold.

Section two of this rule amends PPB Rule § 3-08(c)(1)(i) to require notice of award for procurements made using the M/WBE Noncompetitive Small Purchase mechanism. Section four of this rule amends PPB Rule § 3-08(d) to set forth the requirements of the notice of award for procurements made using the M/WBE Noncompetitive Small Purchase mechanism.

Sections two and four were included in this rule in response to the discussions at the December 15, 2022 meeting. The notice requirements required by these sections will promote oversight and transparency in the City's procurement process.

These rule amendments are made pursuant to the authority granted to the City by Chapter 569 of the Laws of 2022 and codified in Charter § 311(i)(1).

Adopted Rule Change

Please note that 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. SUBDIVISION (a) OF SECTION 3-08 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(a) *Definition.* Small purchases are those procurements in value of not more than \$100,000 or those procurements made, pursuant to subparagraph (c)(1)(iv) below, in value of not more than [\$500,000] the maximum amount authorized pursuant to paragraph (1) of subdivision (i) of section 311 of the Charter. This collectively shall be known as the small purchase limit. Procurements over \$100,000 in value that are not made[,] pursuant to subparagraph (c)(1)(iv) below, shall not be within the small purchase limit.

§ 2. SUBPARAGRAPH (i) 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:

(i) Public notice of solicitation and award, written decision to procure technical, consultant, or personal services, presolicitation review report, Recommendation for Award, vendor protests, written notice to the low bidder or offeror of non-responsiveness, VENDEX questionnaires (unless the total aggregate value of purchases, franchises, and concessions awarded to that vendor including this one during the immediately preceding twelve-month period equals or exceeds \$250,000) and public hearing (unless the award is valued over \$100,000) shall not be required for small purchases awarded, pursuant to this section. Notwithstanding any provision of this subparagraph, notice of award shall be made in accordance with paragraph (d)(2) for procurements made pursuant to subparagraph (c)(1)(iv) below.

§ 3. 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 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 [\$500,000] 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.

§ 4. SUBDIVISION (d) OF SECTION 3-08 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(d) *Award.*

(1) *Determination.* Purchases made, pursuant to subparagraph (c)(1)(iii) above, 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 must issue a purchase order or contract, as appropriate, to the successful bidder or offeror.

(2) *Notice of Award.*

(i) *Frequency.* Notice of award for procurements made pursuant to subparagraph (c)(1)(iv) shall be published once in the City Record within fifteen days after registration of the contract.

(ii) *Content.* Such notice shall include:

(A) agency name;

(B) PIN;

(C) title or brief description of the goods, services, or construction procured;

(D) name and address of the vendor;

(E) dollar value of the contract; and

(F) procurement method by which the contract was let.