

## 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 the PPB Rules to remove the requirement that agencies post consecutive notices in the City Record related to certain procurement actions.

**When and where is the hearing?** The PPB will hold a public hearing on the proposed rule. The public hearing will take place on November 1, 2023, at 11:00 A.M. The hearing will be at 255 Greenwich St, 9<sup>th</sup> 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://nycmocs.webex.com/nycmocs/j.php?MTID=m767d3d1d86f39a00d398127f79d584b3>.

Meeting Number: 2348 905 5647

Meeting Password: XGaNtNJY266

- To join the public hearing via telephone, please dial:

+1-646-992-2010 United States Toll (New York City)

+1-408-418-9388 United States Toll

Access Code: 2348 905 5647

**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](mailto: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](mailto: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 November 1, 2023.

**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](mailto: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, 321, 322, 324, 325, and 1043 of the New York City Charter authorize the PPB to make the proposed rules. This proposed rule was not included in the PPB’s regulatory agenda for this Fiscal Year because it was not contemplated when the PPB published its agenda.

**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 Rules**

These proposed Procurement Policy Board (PPB) Rule amendments would update the provisions of the PPB Rules relating to consecutive postings in the City Record.

The PPB is proposing amendments to PPB Rule §§ 3-04(d)(1)(i), 3-05(c)(1)(i), 3-10(e)(1)(i) and (ii), 3-11(e)(1), 3-12(b)(3)(i), 3-13(d)(1), and 3-16(c)(1) to minimize the publication of certain notices. The elimination of certain consecutive posting requirements, which have limited utility to the public, simultaneously preserves the resources of the City of New York and streamlines the procurement process.

Section 1 would amend PPB Rule § 3-04(d)(1)(i) to eliminate the consecutive posting requirement for public notices regarding negotiated acquisitions.

Section 2 would amend PPB Rule § 3-05(c)(1)(i) to eliminate the consecutive posting requirement for public notices regarding sole source procurements. This amendment adds flexibility to the notice process while ensuring that vendors possess a sufficient opportunity to express interest, as notices will remain accessible on the City Record's website.

Section 3 would amend PPB Rule § 3-10(e)(1)(i) and (ii) to modify the consecutive posting requirement for inclusion on prequalification lists.

Section 4 would amend PPB Rule § 3-11(e)(1) to eliminate the consecutive posting requirement for public notices regarding demonstration projects and to modify the posting deadline.

Section 5 would amend PPB Rule § 3-12(b)(3)(i) to eliminate the consecutive posting requirement for public notices regarding innovative procurements.

Section 6 would amend PPB Rule § 3-13(d)(1) to eliminate the consecutive posting requirement for public notices regarding government-to-government purchases.

Section 7 would amend PPB Rule 3-16(c)(1) to modify the consecutive posting requirement for public notices regarding prequalified lists for the HHS Accelerator procurement mechanism.

The PPB's authority to promulgate these rules is found in sections 311, 321, 322, 324, 325, and 1043 of the New York City Charter.

On September 13, 2023, the PPB voted to initiate the rulemaking process under the Citywide Administrative Procedure Act for this proposed rule amendment.

“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. SUBPARAGRAPH (i) OF PARAGRAPH (1) OF SUBDIVISION (d) OF SECTION 3-04 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:**

(i) *Frequency.* Notice of intent to enter into negotiations shall be published at least once in the City Record [for five consecutive editions] at least 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. [The last date of publications of such notice shall appear no fewer than ten days before negotiations are expected to begin.]

**§ 2. SUBPARAGRAPH (i) OF PARAGRAPH (1) OF SUBDIVISION (c) OF SECTION 3-05 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:**

(i) *Frequency.* After the ACCO determines that this procurement method will be used, notice of the intent to enter into negotiations shall be published at least once in the City Record [for five (5) consecutive editions no fewer than] at least 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.

**§ 3. SUBPARAGRAPHS (i) AND (ii) OF PARAGRAPH (1) OF SUBDIVISION (e) OF SECTION 3-10 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK ARE AMENDED TO READ AS FOLLOWS:**

(i) For each category of procurement for which an agency maintains a PQL or intends to establish a new PQL, the ACCO shall publish in the City Record at least once annually [for five consecutive editions] and shall post on the City's website in a location that is accessible by the public simultaneously with its publication a notice or notices specifically identifying each such category and inviting vendors to apply for inclusion on such PQL. Application for inclusion on such PQL shall be continuously available.

(ii) For each procurement not falling within a category for which a PQL has been established, but for which the agency intends to prequalify vendors prior to issuing a solicitation for such procurement, the ACCO shall publish at least once in the City Record [for five consecutive editions] and shall post on the City's website in a location that is accessible by the public simultaneously with its publication a notice of its intention to establish such a PQL and invite vendors to apply for inclusion. There shall be a cutoff date for receipt of prequalification questionnaires for such PQL.

**§ 4. PARAGRAPH (1) OF SUBDIVISION (e) OF SECTION 3-11 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:**

(1) *Frequency.* Notice of intent to enter negotiations for a demonstration project exceeding the small purchase limits shall be published at least once in [not less than five consecutive editions of] the City Record at least ten calendar days before [entering into] 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.

**§ 5. SUBPARAGRAPH (i) OF PARAGRAPH (3) OF SUBDIVISION (b) OF SECTION 3-12 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:**

(i) *Frequency.* Notice of such opportunity shall be published at least once in [not less than five consecutive editions of] the City Record and on the City’s website and shall be posted on the City’s website in a location that is accessible by the public simultaneously with its publication. The due date for receipt of comments and submission of expressions of interest shall be not less than twenty days after [the final] notice in the City Record.

**§ 6. PARAGRAPH (1) OF SUBDIVISION (d) OF SECTION 3-13 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:**

(1) *Notice of intent.* Notice of intent to enter into a government-to-government purchase exceeding the small purchase limits shall be published at least once in the City Record [for at least five consecutive editions] at least 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. [The last date of publication of such notice shall appear no fewer than ten days before negotiations are expected to begin.]

**§ 7. PARAGRAPH (1) OF SUBDIVISION (c) OF SECTION 3-16 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:**

(1) *Frequency.* [At least once annually for five consecutive editions, the] The HHS Accelerator Director must publish at least once annually in the City Record, a notice or notices specifically identifying client services categories covered by HHS Accelerator and inviting vendors to apply for inclusion on the HHS Accelerator PQL. The same documents published in the City [record] Record must be posted continuously and prominently on the City’s website. The City’s website shall also include the criteria used to prequalify vendors. The application to be included on the HHS Accelerator PQL must always be available.

**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:** Posting of City Record Procurement Notices

**REFERENCE NUMBER:** 23 RG 058

**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

Date: August 1, 2023

Senior Counsel

**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: Posting of City Record Procurement Notices**

**REFERENCE NUMBER: MOCS-23**

**RULEMAKING AGENCY: Mayor's Office of Contracts**

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

August 2, 2023

Date