

## **Notice of Adoption of Rules**

Pursuant to the authority vested in the Procurement Policy Board (PPB) by Sections 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 2 of Title 9 of the Rules of the City of New York.

## **Statement of Basis and Purpose**

These Procurement Policy Board (PPB) Rule amendments update the provisions of the PPB Rules relating to vendor protests.

Effective March 9, 2025, the New York City Charter § 311 was amended by Local Law 107 of 2024 to require the PPB to promulgate rules authorizing the submission of a protest by a vendor or a vendor's designated representative of a determination of any procurement action by an agency, except for determinations related to accelerated procurements, emergency procurements, and small purchases.

This rule amendment authorized by the New York City Charter § 311 provides third parties the ability to protest a determination of an agency procurement action on behalf of a vendor.

Section 1 amends PPB Rule § 2-10 to allow a vendor designated representative to protest a determination of a procurement action, creates a new paragraph (1) to define "vendor designated representative" and updates the paragraph numbers for paragraphs (1) to (3).

On March 6, 2025, the PPB voted to initiate the rulemaking process under the Citywide Administrative Procedure Act for this rule amendment. A proposed version of this amendment was published in the *City Record* on April 1, 2025. A public hearing was held on May 1, 2025.

The PPB received one written comment and one oral testimony from the same source at the public hearing and one written comment through the PPB email. Upon careful consideration of the comments and in consideration of the PPB's discussions during the March public meeting, the PPB adopted the amendment on May 8, 2025.

The PPB's authority to promulgate these rules 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 department, unless otherwise specified or unless the context clearly indicates otherwise.

**Section 1. Section 2-10 of Title 9 of the Rules of the City of New York is amended to read as follows:**

- (a) Protests. Any vendor or vendor's designated representative may protest a determination of any procurement action pursuant to this section, unless another appeal or protest provision is provided in these Rules. Accelerated procurements, emergency procurements, and small purchases are not subject to vendor protests.

(1) Vendor's designated representative. Person (as defined by PPB Rule 1-01(e)) authorized by a vendor to submit a protest on behalf of the vendor. No more than one Person may be a vendor's designated representative at a time. A vendor and their designated representative may not both submit protests on the same determination. Protests by a vendor's designated representative must include evidence of such designation.

(2) Time for Protest. A protest shall be made within ten days after the protesting vendor knows or should have known of the facts that prompted the protest but no later than ten days after publication of the notice of award.

[(2)] (3) Form and Content of Protest. The protest shall be filed with the Agency Head and shall briefly state all the facts or other basis upon which the vendor contests the agency decision. Supporting documentation, if any, shall be included. If a vendor has already been selected for the procurement, the Agency Head shall, upon receipt of the protest, mail a copy of the protest to the selected vendor. Filing of the protest shall be accomplished by actual delivery of the protest documents to the office of the Agency Head. The vendor shall also send a copy of its protest to the ACCO and the New York City Comptroller, Office of Contract Administration.

[(3)] (4) Agency Head Determination. The Agency Head may, in his or her sole discretion, invite written comment from the selected vendor (if any) or other interested party, and/or convene an informal conference with the protesting vendor, the selected vendor, and/or any other interested party to resolve the protest by mutual consent. The Agency Head's determination with respect to the merits of the protest shall be mailed to the protesting vendor and the selected vendor (if any) within thirty days of receipt of the protest documents. The determination shall state the reasons upon which it is based. Copies of all documents required by this paragraph shall be forwarded to the CCPO and the Comptroller as such documents become available to the agency. The Agency Head's determination shall be final. The procurement action under protest shall not be stayed unless the Agency Head determines that it is in the City's best interest to delay the action.