

Procurement Policy Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Procurement Policy Board (PPB) is proposing changes to the PPB Rules to add timeframes for the completion of agency performance evaluations and to clarify exemptions for performance evaluations.

When and where is the hearing? The PPB will hold a public hearing on the proposed rule. The public hearing will take place Monday, June 16, 2025, at 11:00 AM. The hearing will be at 255 Greenwich St, 9th 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://teams.microsoft.com/l/meetup-join/19%3ameeting_ZGNiOGI1ZTYtNjY0Yy00YTVkLWI0ZjktZDcyZDMwZWQ2ZTgx%40thread.v2/0?context=%7b%22Tid%22%3a%2232f56fc7-5f81-4e22-a95b-15da66513bef%22%2c%22Oid%22%3a%22ef8843c3-c7eb-4912-a948-ce23417db9ab%22%7d

Meeting Number: 264 020 300 264 5

Meeting Password: LC6T5WE2

- To join the public hearing via telephone, please dial: +1 646-893-7101,,606819319#

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.
- **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, 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. Please note that the hearing is for accepting oral testimony only and is not held in a "Question and Answer" format.

Is there a deadline to submit comments? The deadline to submit written comments will be June 16, 2025.

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, 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, 314, 333, and 1043 of the New York City Charter authorize the PPB to make the proposed rules.

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 Rule

These proposed Procurement Policy Board (PPB) amendments would update the provisions of the PPB Rules relating to agency performance evaluations of vendors. The proposed changes would require agencies to provide vendor performance evaluations in a timely manner, while also ensuring that vendors are fully meeting contract requirements.

Specifically, the PPB is proposing amendments to PPB Rule § 4-01 to:

- (i) allow CCPO the option to determine the form of performance evaluations as performance evaluations may vary based on the contract industry,
- (ii) clarify the criteria for performance evaluations,
- (iii) add a timeframe for the completion of agency performance evaluations,
- (iv) codify existing exemption practice for performance evaluations, and
- (v) outline the agency's responsibilities after a performance evaluation.

Section 1 of this proposed rule would amend PPB Rule § 4-01(a) to provide that the City Chief Procurement Officer (CCPO) may determine the form of performance evaluations and clarify requirements for performance evaluations, and add a new paragraph (2) to relocate existing criteria for client services performance evaluations from § 4-01(e) to § 4-01(a). Relocating the client services criteria to subdivision (a) will reduce confusion on the criteria for performance evaluations.

This proposed rule would also amend § 4-01(b) to add a timeframe for the completion of annual agency performance evaluations. This amendment would require performance evaluations of new contracts to be completed within 90 days after the first anniversary of the contract start date and, for contract renewals, would provide that a performance evaluation should have been completed within the year preceding the new contract year and prior to completion of responsibility determinations. This amendment would also provide that agencies may complete additional performance evaluations, subject to the CCPO's approval.

This proposed rule would also amend § 4-01(c) to establish requirements for the agency's responsibility following a performance evaluation and a vendor's response, including maintaining documentation, responding to the vendor's response, and entering unsatisfactory overall ratings as a caution in PASSPort.

Finally, this proposed rule would amend § 4-01(e) to replace the criteria for client services performance evaluations, which would be relocated to § 4-01(a), with a new subdivision (e) to clarify exemptions for performance evaluations.

The PPB's authority to promulgate these rules is found in Sections 311, 314, 333, 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 4-01 of Title 9 of the Rules of the City of New York is amended to read as follows:

(a) Criteria. The CCPO may determine the form of performance evaluations, which may vary based on contract industry. [Performance] A performance evaluation shall:

(1) conform to the requirements of the contract, including, but not limited to, quality [and] of performance, timeliness of performance, [and] fiscal administration, and fiscal accountability. The agency awarding the contract shall identify specific objectives and evaluation criteria to be included as part of the contract. Where practicable, the agency shall develop both qualitative and quantitative performance indicators, including outcome criteria; and,

(2) for client services shall:

(i) include periodic unannounced site visits and interviews with clients and staff, the results of which shall be summarized and made a part of the evaluation report; and

(ii) consider assessments of client satisfaction. The agency shall assess client satisfaction by using techniques as may be appropriate. If interviews or surveys are used, clients shall be selected on a statistically random basis to ensure sampling of a representative cross-section of the client population.

(b) Frequency. The agency shall monitor the vendor's performance against such standards and indicators on an ongoing basis and sufficiently far in advance of the end of the contract term to determine whether an existing contract should be extended, renewed, terminated, or allowed to lapse. [A] Except as specified in subdivision (c) of this section, a performance evaluation shall be [done no less than once] completed annually [except that for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the small purchase limits, an evaluation report shall be prepared only in cases of deficient performance] within 90 days after the anniversary of the contract start date. For contracts that an agency is planning to renew, the agency should have completed a performance evaluation within the year preceding the new contract year and prior to completing the responsibility determinations for the renewals. Notification to the vendor of deficient performance shall be made as soon as practicable, and shall not await the annual evaluation. Additional performance evaluations may be completed at the agency's discretion with the CCPO's approval. The CCPO shall establish procedures to ensure systematic evaluation of vendor performance.

(c) Report and vendor response. The evaluation and supporting documentation shall be incorporated in a report and entered into PASSPort. A copy of the evaluation report and a copy of this section shall be sent promptly to the vendor by email.

(1) Within fifteen days of sending a copy by email of the evaluation report (or any notification of deficient performance), the vendor [shall] must respond [in writing] to the agency

in writing. Such response [shall] must include a corrective action plan identifying with specificity the steps the vendor intends to take to remedy any deficiencies identified by the agency. Failure to respond within the specified time shall constitute the vendor's agreement with the contents of the report, but will not release the vendor from its obligations under this section.

[The CCPO shall establish a centralized computerized database for storage and retrieval of the evaluation.]

(2) The agency shall provide a written response to the vendor's response to the evaluation report. The vendor may not provide additional responses.

(3) A performance evaluation that results in an unsatisfactory overall rating shall be entered as a caution in the centralized computer database to comport with Section 2-08(d)(2) of these Rules.

(d) Contract termination. Nothing in this section shall affect an agency's right to terminate a contract for deficient performance or otherwise, in accordance with the terms of the contract.

(e) [Client services.

(1) Unannounced site visits. Performance evaluations shall include periodic unannounced site visits and interviews with clients and staff. The results of the unannounced site visits shall be summarized and made a part of the evaluation report.

(2) Assessments of client satisfaction. The agency shall assess client satisfaction by using techniques such as periodic interviews with clients, interviews with members of the clients' families, questionnaires to survey clients or their families, or such other techniques as may be appropriate. In the event that interviews or surveys are used, clients shall be selected on a statistically random basis to ensure sampling of a representative cross-section of the client population.]

Exemptions. The following contracts are exempt from the performance evaluation requirements, unless there has been deficient performance:

(1) Contracts for goods that were:

(i) procured by competitive sealed bid; and

(ii) not awarded on best value.

(2) Procurements under the small purchase limits.

In certain other cases it may be in the best interest of the City not to complete an annual performance evaluation for a specific evaluation period, except in the case of deficient performance. The agency may apply for such an exemption from the evaluation requirements for that evaluation period in a manner directed by the CCPO. Such exemption will be in the sole discretion of the CCPO.

NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
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CERTIFICATION PURSUANT TO
CHARTER §1043(d)

RULE TITLE: Amendment of Rule Relating to Performance Evaluations

REFERENCE NUMBER: 2025 RG 030

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: May 8, 2025

Senior Counsel

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 Rule Relating to Performance Evaluations

REFERENCE NUMBER: PPB-10

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/ Francisco X. Navarro

Mayor's Office of Operations

May 8, 2025

Date