

Notice of Adoption of Rules

Pursuant to the authority vested in the Procurement Policy Board (PPB) by Sections 311, 314, and 333 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 4 of Title 9 of the Rules of the City of New York.

Statement of Basis and Purpose

These Procurement Policy Board (PPB) amendments update the provisions of the PPB Rules relating to agency performance evaluations of vendors. The changes 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 amending 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 rule amends 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 rule also amends § 4-01(b) to add a timeframe for the completion of annual agency performance evaluations. This amendment requires performance evaluations of new contracts to be completed within 90 days after the first anniversary of the contract start date and, for contract renewals, provides 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 also provides that agencies may complete additional performance evaluations, subject to the CCPO's approval.

This rule also amends § 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 rule amends § 4-01(e) to replace the criteria for client services performance evaluations, which is relocated to § 4-01(a), with a new subdivision (e) to clarify exemptions for performance evaluations.

On May 8th, 2025, the PPB voted to initiate the rulemaking process under Citywide Administrative Procedure Act for this rule amendment. A proposed version of the rule was published in the *City Record* on May 15th, 2025. A public hearing was held on June 16th, 2025.

The PPB received one written comment at the public hearing. Upon careful consideration of the comment and in consideration of the PPB's discussions during the May public meeting, the PPB adopted the amendment on [date].

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.