

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 permit electronic bidding.

When and where is the hearing? The PPB will hold a public hearing on the proposed rule. The public hearing will take place Tuesday, November 12, 2024 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_ZTZjNTdiOWYtNDk2My00OTBkLTk3MGYtZGM2MWM1ZjFiNWU4%40thread.v2/0?context=%7b%22Tid%22%3a%2232f56fc7-5f81-4e22-a95b-15da66513bef%22%2c%22Oid%22%3a%2216bb80d0-b04e-477a-80a7-d8f84b9d9e66%22%7d

Meeting Number: 296 790 483 378

Meeting Password: EQNdA2

- To join the public hearing via telephone, please dial: +1 646-893-7101,,989662477#

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 November 12, 2024.

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, 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

The proposed Procurement Policy Board (PPB) amendments would update the provisions of the PPB Rules relating to electronic bidding. Electronic bidding (e-bidding) allows vendors to electronically bid on a city agency's solicitations, instead of submitting paper bids.

On March 1, 2024, General Municipal Law (GML) § 103 was amended to allow an agency of a city with a population of one million or more to authorize or require the electronic submission of bids and offers for any public contract. The legislation also allows for the public opening, reading, and identification of bids and proposers through online livestreaming and by posting an online record of such bids or proposals.

These rule amendments that permit electronic bidding for all contracts as authorized by GML § 103 would result in a more efficient bidding process by allowing bids and proposals to be opened electronically via livestream, revised more easily and processed more quickly by agencies, and ultimately streamline the procurement process.

Additionally, these rule amendments update the definition of "In Ink" and include a new definition of "Electronic Signature," and update relevant PPB sections to include both definitions for clarity and consistency.

Section 1 amends PPB Rule § 1-01(e) to update the definition of "In Ink" to include only signatures made with pen and add a new definition for "Electronic Signature."

Section 2 adds a new PPB Rule § 1-05 providing that electronic signatures shall have the same effect as signatures signed in ink.

Section 3 amends PPB Rule § 2-07(c)(3) and (4) to add "Electronic Signature."

Section 4 amends PPB Rule § 3-02(b)(2)(i) to allow agencies discretion regarding bid submission.

Section 5 amends PPB Rule § 3-02(d)(1) to allow agencies discretion to determine the bid submission format by removing paper requirements.

Section 6 amends PPB Rule § 3-02(e)(1)(i)(F) to provide the option to include a link to access the livestreaming of the opening, reading, and identification of bids in a notice of availability.

Section 7 amends PPB Rule § 3-02(e)(1)(ii)(B)(f) to provide the option, granted to agencies by GML § 103, to include a link to access the livestreaming of the opening, reading, and identification of bids in a notice of solicitation.

Section 8 amends PPB Rule § 3-02(k)(1) to give agencies discretion to determine the bid submission format by removing paper requirements.

Section 9 amends PPB Rule § 3-02(l)(1) and (2) to give agencies discretion to determine what format bids are stored in and to require agencies to post a record of submitted bids in compliance

with requirements in GML § 103 and clarifies copies of bids be made available during in-person bid openings.

The proposed rule also includes minor plain language edits.

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

On September 19, 2024, the PPB voted to initiate the rulemaking process under the Citywide Administrative Procedure Act for this proposed rule amendment.

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. THE DEFINITION OF IN INK SET FORTH IN SUBDIVISION (e) OF SECTION 1-01 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED, AND A NEW DEFINITION OF ELECTRONIC SIGNATURE IS ADDED, TO READ AS FOLLOWS:

Electronic Signature. An electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record. An electronic signature is considered to be "attached to or logically associated with an electronic record" if the electronic signature is linked to the record during transmission and storage.

In Ink. [A provision specifying the] The use of a pen [to satisfy] satisfies all signature and initialing requirements, unless otherwise specified in the provision. [Wherever these Rules provide that an action be taken "in ink," this requirement may be satisfied, if provided for in the solicitation, through the use of electronic signatures.]

§ 2. CHAPTER 1 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED BY ADDING A NEW SECTION 1-05 TO READ AS FOLLOWS:

§1-05 Signature Requirements.

Unless otherwise specified, wherever these Rules require a signature or an initial, such requirement may be satisfied through the use of electronic signatures as defined in section 1-01(e) of this chapter. The use of an electronic signature shall have the same validity and effect as the use of a signature signed in ink.

§ 3. PARAGRAPHS (3) AND (4) OF SUBDIVISION (c) OF SECTION 2-07 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK ARE AMENDED TO READ AS FOLLOWS:

(3) submission of bids or proposals in the form specified in the solicitation including all required signatures, in ink or by electronic signature, and including all required pricing information;

(4) if bid or proposal price has been materially altered, alterations must be initialed in ink or by electronic signature by the bidder or proposer. If the alteration has not been initialed in ink or by electronic signature, and can be severed from the other items in the bid or proposal, then that particular item only may be considered non-responsive;

§ 4. SUBPARAGRAPH (i) OF PARAGRAPH (2) OF SUBDIVISION (b) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(i) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids; requirements for the electronic submission of bids, if any; time, date, and location of any pre-bid conferences (and a statement whether such conferences are mandatory); and the [address] location where bids are to be [delivered] submitted;

§ 5. PARAGRAPH (1) OF SUBDIVISION (d) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(1) Bid Form and Content. The IFB [shall] will provide a form on which the bidder [shall] must insert the bid price, or other information requested, if any, pursuant to 3-02 (o)(1), and [shall] must sign and submit along with all other necessary submissions. Bids [shall] must be typewritten or written legibly in ink. Erasures or alterations shall be initialed by the signer in ink or by electronic signature. All bids [shall] must be signed in ink or by electronic signature. The bid invitation will also [shall] require that the bid be submitted in a sealed envelope, addressed as required in the bid documents[, on or before the time and at the place designated in the bid documents. If so provided in the solicitation, sealed bids may be submitted electronically]. Where award will be made to the bidder whose bid represents the best value to the City, the IFB may also provide that other information requested, if any, may be submitted up to thirty (30) days from the bid opening by all bidders whose bids are to be considered pursuant to 3-02(o)(1)(iii).

§ 6. ITEM (F) OF SUBPARAGRAPH (i) OF PARAGRAPH (1) OF SUBDIVISION (e) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(F) the date, time, and location and, if applicable, a link to access the livestreaming of the opening, reading, and identification of bids on a publicly accessible website, for the receipt and opening of bids;

§ 7. CLAUSE ((f)) OF ITEM (B) OF SUBPARAGRAPH (ii) OF PARAGRAPH (1) OF SUBDIVISION (e) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

((f)) date and time by which, and the [place] location where, bids [shall] must be submitted and [shall] will be publicly opened and if applicable, a link to access the livestreaming of the opening, reading, and identification of bids on a publicly accessible website; and

§ 8. PARAGRAPH (1) OF SUBDIVISION (k) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:

(1) Policy. Any bid received at the [place] location designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the [place] location designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Late bids and modifications shall not be opened until after registration of the contract.

§ 9. PARAGRAPHS (1) AND (2) OF SUBDIVISION (l) OF SECTION 3-02 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK ARE AMENDED TO READ AS FOLLOWS:

(1) Receipt. Upon its receipt, each bid and modification shall be time and date-stamped, but not opened, and stored in a secure [place] location until the time and date set for bid opening. Before bid opening the agency may not disclose the identity of any bidder.

(2) Opening and Recording. Bids and modifications [shall] will be opened publicly, at the time, date, and [place] location designated in the IFB. The name of each bidder, the bid price, and such other information as is deemed appropriate [shall] will be read aloud or otherwise made available. These requirements may be met through access to a computer terminal at the location where bids are to be opened, provided that paper documents are available upon request at the time of in-person bid opening. This information also [shall] will be recorded at the time of bid opening. The bids [shall] will be tabulated or a bid abstract prepared and made available for public inspection. The opened bids [shall] will be available for public inspection [at a reasonable time after] within five days of bid opening but in any case before vendor selection except to the extent the bidder designates trade secrets or other proprietary data to be confidential. Material so designated [shall] must accompany the bid and [shall] must be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Prices, makes, and model or catalog numbers of the items offered, deliveries, and terms of payment [shall] will be publicly available at a reasonable time after bid opening but in any event before vendor selection regardless of any designation to the contrary at the time of bid opening. For bids on construction contracts submitted in accordance with Section 3-02 (b)(xx)(J) of these Rules, the sealed list of subcontractors submitted with the low bid [shall] will be opened after such low bid has been announced and the names of the subcontractors shall be announced. The sealed lists of

subcontractors submitted by all other bidders pursuant to Section 3-02 (b)(xx)(2)(J) of these Rules [shall] will be returned to such bidders unopened after the contract award.

**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: Rules Relating to Electronic Bidding

REFERENCE NUMBER: PPB-6

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

October 3, 2024
Date

**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: Rules Relating to Electronic Bidding

REFERENCE NUMBER: 2024 RG 103

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
Acting Corporation Counsel

Date: October 2, 2024