Comment Submitted By The Legal Aid Society Regarding
Proposed Change to New York City Procurement Policy Board Rules

November 17, 2025

The Legal Aid Society (LAS) is responding to a notice issued by the New York City Procurement Policy Board (PPB) for public comment regarding the PPB's proposed change its rules (the PPB Rules). According to the notice, the PPB has proposed changes to the PPB Rules "to reflect the decommissioning of HHS Accelerator and to comply with Local Law 169 of 2023," which required the Mayor's Office of Contract Services to complete a study and issue a report with recommended time frames for each step of the procurement process for a human services contract and to require the PPB to promulgate rules setting forth time frames in accordance with the findings of the report.

The Legal Aid Society has a strong interest in the delivery of the "client services" that are the subject of the proposed PPB Rule changes. Legal Aid provides legal services to vulnerable New Yorkers. Those New Yorkers depend on the client services referenced in the proposed rule changes.

Our main concern is that the proposed rule changes would adopt a system of prequalification as the only source selection method for client services procurements. The organizations that rely on City funds to provide services should be able to operate without any unreasonable fear that funds will be lost and with confidence that payment will be promptly received after service delivery.

The proposed PPB Rule changes contemplate that the City Chief Procurement Officer (CCPO), through the creation of prequalified lists, will determine which organizations may seek to provide client services, and which may not. The proposed rule changes would concentrate control over the delivery of client services in violation of Section 317 of the City Charter, Section 104(b) of the General Municipal Law, and Section 6-116.2 of the N.Y.C. Administrative Code.

The proposed shift to a prequalification system also does not appear to be required to fully decommission and eliminate references to HHS Accelerator, which has been replaced by the PASSPort system, or to comply with Local Law 169 of 2023.

These proposal changes are significant, and should be considered after the new Mayor and Comptroller are sworn in.

Outlook

[EXTERNAL] Comment on Proposed Rules

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The following is my personal comment regarding the proposed rule changes that were heard by the PPB this morning. This comment is mine, and does not necessarily reflect the views of any of my clients or my law firm.

With the decommissioning of "HHS Accelerator," the Procurement Policy Board (or PPB) should not authorize the Mayor to use pre-qualified lists (PQLs) to dictate which organizations may compete for client services contracts in New York City. The Mayor has no lawful authority to create centralized PQLs, and the City of New York does not have the power to adopt a pre-qualification process for all client services contracts.

Mayoral Executive Order No. 160 of 2012 did not contemplate the creation of centralized PQLs for all client services. The purpose of E.O. 160 was to allow human services providers to submit a single set of core documents to the City once, and ensure that those documents would be stored centrally and accessed by agencies on an as-needed basis.

Under the New York City Charter, PQLs are disfavored and may only be implemented on an agency-by-agency basis. Section 104-b of the General Municipal Law states that client services "must be procured in a manner so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers . . . , to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption." Section 317 of the Charter says that each "agency shall select the most competitive alternative method of procurement" which is "appropriate under the circumstance." In doing so, an agency may consider use of a PQL under Section 320 of the Charter. To facilitate that, Section 324 of the Charter says that "[a]gencies may maintain lists of prequalified vendors and entry into a prequalified group shall be continuously available."

The law, however, does not authorize the Mayor to create PQLs. As Justice Sotomayor noted when she was a district court judge: "The Charter prescribes a system of checks and balances in which procurement decisions are not allocated solely to the Mayor's discretion. Rather, power is apportioned between the agency heads, who are Mayoral appointees, the Comptroller and the Mayor." *Hellenic Am. Neighborhood Action Comm. v. City of New York*, 933 F. Supp. 286 (Sotomayor, J.), *rev'd on other grounds*, 101 F.3d 877 (2d Cir. 1996). Justice Sotomayor observed that "discretion" committed to an "agency contracting officer" may not be "preempted by the Mayor's office" in that system. *Id.* Yet, that is precisely what the PPB is contemplating. Excessive centralization of procurement authority can facilitate political interference in procurement actions and impact activities protected by the First Amendment. *See, e.g., Housing Works, Inc. v. City of New York,* 72 F. Supp. 2d 402 (S.D.N.Y. 1999) (discussing impact of tension between Giuliani Administration and Housing Works on contract actions), *appeal dismissed as moot*, 203 F.3d 176 (2d Cir. 2000).

To the extent the Mayor attempts to use special questionnaires for pre-qualification (notwithstanding the discussion below), it also constitutes a usurpation of the Comptroller's authority under Section 6-116.2 of the N.Y.C. Administrative Code to "jointly" operate the system of questionnaires now in PASSPort (formerly in VENDEX). The Comptroller's joint control over such questionnaires has successfully prevented the Mayor from constantly expanding their scope.

Even if the proposed rule change did not improperly assign authority to the Mayor, it would be unlawful because the Charter does not authorize the City to adopt a system of prequalification for such a large swath of the City's contracts. The proposed sector-wide use of prequalification violates Section 317 of the Charter, which states that each "agency shall select the most competitive alternative method of procurement" that is "appropriate under the circumstance" for the particular procurement.

Given the breadth of this system of pre-qualification, a not-for-profit organization that faces a denial, suspension, or revocation of pre-qualification by the Mayor is, in effect, debarred from the City's procurement system. Yet, the proposed changes to the PPB Rules do not allow for the kind of hearing that a debarment would warrant. *See also Ball v. N.Y.S. Dep't of Health*, 2025 N.Y. Misc. LEXIS 2258, Index No. 2024-469 (Sup. Ct., Schoharie County, April 14, 2025) (Seventh Amendment jury trial right) (appeal pending).

The proposal includes one positive development: Under the proposed changes to the PPB Rules, the agencies, not the Mayor, would decide what information a not-for-profit organization must submit to be considered for pre-qualification, and the agencies (not the Mayor) would collect such information. The proposed changes include this sentence: "The prequalification of vendors for client services shall be conducted pursuant to the rules and procedures set forth in section 3-10, except as modified by this section." Many of those preserved provisions protect the authority of the procuring agency, and do not allow for Mayoral involvement. For example, since the new rules do not modify the applicability of Section 3-10(f) of the PPB Rules to client services procurements, this statement would govern: "To apply for inclusion on a PQL, a vendor must complete and submit an ***agency-developed*** prequalification questionnaire." (Emphasis added.)

Finally, the proposed rule changes do not satisfy the requirements of Local Law 169 of 2023 for "time frames." The time periods set by the rule contain too many exceptions to satisfy that legislative requirement.

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