

M/WBE Noncompetitive Small Purchase Method: Procedural Compliance Review



June 30, 2020

1. Overview

In November 2019, the City's Procurement Policy Board (PPB) unanimously voted to amend PPB Rule 3-08 to allow for direct purchases of goods, services and construction from City-certified Minority and Women-Owned Business Enterprises (M/WBEs) up to \$500,000, consistent with newly enacted state legislation. This rule change took effect on January 1, 2020. As a result of this update, the City of New York launched the updated M/WBE Noncompetitive Small Purchase Method in January 2020.

With this launch, the Mayor's Office of Contract Services (MOCS) has continued to monitor compliance of purchases made utilizing this award method. As part of this compliance monitoring, MOCS was responsible for conducting a procedural compliance review of 10% of purchases made in FY20 Q3, the first quarter in which agencies were authorized to make purchases pursuant to the requirements of the M/WBE Noncompetitive Small Purchase Method as defined by the PPB Rule § 3-08 and the updated guidance provided by the MOCS in January 2020. A description of this procedural review and the resulting findings are outlined below in the report.

2. Scope of Compliance Review for FY20 Q3

In May 2020, the Mayor's Office of Contract Services and the Office of the Comptroller agreed to revise the compliance review requirements in light of the current public health emergency due to COVID-19. As a result of limitations in access to contract records stemming from the City instituting telecommuting policies, the number of contract awards for full compliance review was amended from 10% to 5%. Based on 287 total M/WBE Noncompetitive Small Purchase contracts awarded between January 1, 2020 to March 31, 2020, MOCS initially identified a randomized sample of 29 total M/WBE Noncompetitive Small Purchase contracts. However, in line with the above amendment, the scope of this first report was revised to include 15 contracts, or 5% of the total number of awarded contracts. The remaining 14 contracts will be reviewed when the City lifts the telework policy and access to the contract records become available.

3. Approach and Methodology

Based on the pool of contract awards selected for this compliance review, each contracting agency was contacted and asked to respond to a series of questions covering the various procedural requirements for making an M/WBE Noncompetitive Small Purchase. Additionally, the contracting agencies were asked to provide related documentation for the identified contracts.

Compliance Reviewers assessed the following 25 attributes associated with contracts awarded using the M/WBE Noncompetitive Small Purchase method and indicated whether each contract met the outlined requirements. The attributes reflect end-to-end procurement activities for this method and are listed below by phase.

Requisition Phase

1. Purchase was between \$25K (\$35K for construction) and \$500K
2. Purchase was not federally funded
3. Purchase was for Construction, Standard Services, Professional Services or Goods
4. Agency solicited at least 3 quotes/responses from City-certified M/WBEs
5. Agency received at least 3 quotes/responses from City-certified M/WBEs
6. Where applicable, Agency documented their justification for an inability to obtain at least 3 quotes if less than 3 quotes/responses received

Required Approvals

7. Purchase was not for fuel, fleet or furniture
8. If purchase was for fuel, fleet or furniture, DCAS approval was received
9. Law Department approval received for contracts over \$100K
10. OMB approval received for purchases over \$100K with capital funding

Contract Award Phase

11. Contract awarded to a City-certified M/WBE
12. Public hearing was held for contracts over \$100K
13. Reasonableness of noncompetitive price justification provided
14. LL63 posting requirement met (where applicable)
15. Use of Standard Professional Services Contract template and language for contracts over \$100K
16. Use of Standard Construction Contract for construction contracts over \$100K
17. Use of M/WBE Small Purchase Rider for construction contracts over \$100K
18. Use of appropriate prevailing wage (PW) schedule (where applicable)
19. Awarded vendor is compliant with LL34/Doing Business Data requirements
20. Agency completed a Vendor Name Check (VNC) (where applicable)
21. Agency completed an appropriate Responsibility Determination

Contract Registration Phase

22. Contract registered as a general contract (CT1)
23. Agency fully completed the Determination of Award
24. Courtesy copy of procurement file was sent to Comptroller within 30 days of registration
25. Agency maintained a complete procurement file

Each of the 15 contracts included within the scope of this compliance review were assessed for the 25 attributes listed above, which yielded 375 total attributes covered within the scope of the current report.

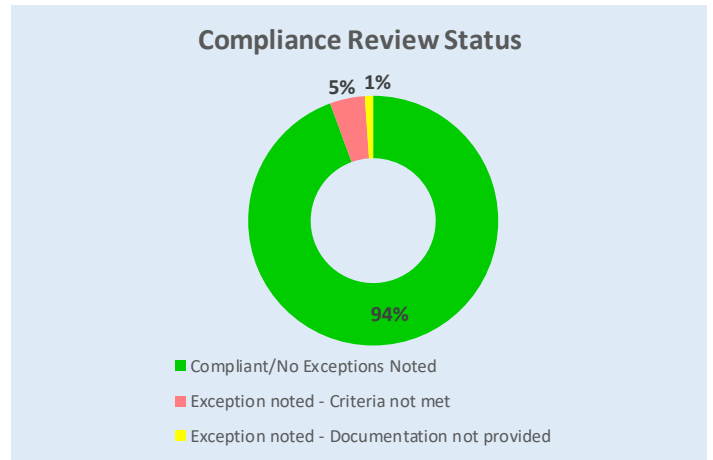
Based on the agencies' responses to the series of questions and a review of the supporting documentation provided, the Compliance Reviewer assigned each attribute to one of three categories:

- Compliant/No exceptions noted
- Exceptions noted – Criteria not met
- Exceptions noted – Documentation not provided

4. Findings

The overall findings for the 375 total attributes that comprise the scope of this compliance review were as follows:

- **Compliant/No Exceptions Noted:** 354 attributes, or 94% of all attribute activities were found to be in full compliance
- **Exceptions noted – Criteria not met:** 17 attributes, or 5% of all attribute activities were not in full compliance
- **Exception noted – Documentation not provided:** 4 attributes, or 1% of all attribute activities were missing required documentation



Additional Compliance Review Results

Refer to Tables 1 and 2 below for additional compliance review results. Table 1 provides the compliance review results by procurement phase and Table 2 by agency and contract ID.

Table 1. Compliance Review Results by Procurement Phase

Procurement Phase	Total # Attributes (All 15 Contracts)	Compliant/No Exceptions Noted		Exception noted - Criteria not met		Exception noted - Documentation not provided	
		# Attributes	%	# Attributes	%	# Attributes	%
Requisition	90	85	94%	3	3%	2	2%
Required Approvals	60	60	100%	0	0%	0	0%
Contract Award	165	157	95%	7	4%	1	1%
Contract Registration	60	52	87%	7	12%	1	2%
Overall	375	354	94%	17	5%	4	1%

Table 2. Compliance Review Results by Contract

#	Agency	Contract ID	Description	Registration Date	Award Amount	Compliant/No Exceptions Noted		Exception noted - Criteria not met		Exception noted - Documentation not provided	
						# Attributes	%	# Attributes	%	# Attributes	%
1	FDNY	20201413744	FIRE LADDERS AND GENUINE REPAIR PARTS	1/15/20	\$62,000	25	100%	0	0%	0	0%
2	FDNY	20201410146	HOT STOP 1500 FIRE CURTAIN WINDOW BLANKET & TRAINING BLANKET	1/3/20	\$109,074	22	88%	2	8%	1	4%
3	NYPD	20201415871	CABLES, QMS 2077	1/15/20	\$20,095	25	100%	0	0%	0	0%
4	OATH	20201412526	CISCO WEBEX	1/2/20	\$41,452	21	84%	4	16%	0	0%
5	DPR	20201415424	TO PURCHASE SIDEWALK SIGNS FOR PARKS	1/13/20	\$68,414	25	100%	0	0%	0	0%
6	DSS	20201417717	TECHNICAL ASSISTANCE FOR THE CHANGE CAPITAL FUND PROJECT	2/5/20	\$100,000	22	88%	2	8%	1	4%
7	DCAS	20205401561	MWBE Dell Computer Procurement	3/1/20	\$251,977	25	100%	0	0%	0	0%
8	DCAS	20205401591	Consulting Services	2/28/20	\$94,640	25	100%	0	0%	0	0%
9	DEP	20201416703	HEAVY DUTY EAGER BEAVER TAG-A-LONG TRAILERS	1/27/20	\$99,996	25	100%	0	0%	0	0%
10	DOB*	20201411501	ANNUAL SUBSCRIPTION FOR EMERGENCY MANAGEMENT AND RESPONSE	1/21/20	\$141,950	24	96%	1	4%	0	0%
11	DOF	20201413148	Audio / Visual Equipment (375 Pearl) Phase 2	1/16/20	\$66,000	25	100%	0	0%	0	0%
12	OCME	20201416982	To provide software licenses and support services	1/28/20	\$90,605	25	100%	0	0%	0	0%
13	DOITT	20201419714	EMC XTREMIO ADDITIONAL CAPACITY (O365)	2/28/20	\$95,481	25	100%	0	0%	0	0%
14	DORIS*	20201418588	CONRES IT SERVICES	2/14/20	\$27,000	16	64%	7	28%	2	8%
15	TLC	20201415571	Purchase and delivery of twelve (12) Cisco line cards	1/9/20	\$67,859	24	96%	1	4%	0	0%
Overall						354	94%	17	5%	4	1%

*NOTE: DORIS canceled contract ID 20201418588 and DOB canceled contract 20201411501 shortly after contract award and registration.

There were eight agencies that awarded nine contracts using the M/WBE Noncompetitive Small Purchase method where no exceptions were noted. There was 100% compliance with relevant procedural requirements assessed for these nine contracts.

There were six contracts that had at least one attribute marked as “Exception noted – Criteria not met”. Of these six contracts, three contracts were also noted to be missing some required documentation. Where possible, agencies will rectify the procedural item that was missed or provide the documentation that was missing or incomplete.

Based on the compliance review of the 15 contracts within the scope of this first report, MOCS found that agencies were fully compliant with 94% of all procedural requirements. In the areas where exceptions were noted, MOCS will provide the targeted training and support needed for agencies to fully comply with the procedural requirements of the M/WBE Noncompetitive Small Purchase procurement method. MOCS will also enhance our guidance materials and emphasize the relevant topics in our ongoing training sessions with all agencies.