

## **Procurement Policy Board**

### **Notice of Adoption of Rule**

Pursuant to the authority vested in the Procurement Policy Board by Section 311 of the New York City Charter (“Charter”) and in accordance with the requirements of Section 1043 of said Charter, the Procurement Policy Board has adopted amendments to Chapter 1 and Chapter 3 of Title 9 of the Rules of the City of New York. The amendments were published in the City Record on October 11, 2019, and a supplemental notice was published on October 15, 2019. A public hearing was held on November 12, 2019. The amendments were adopted by the Procurement Policy Board on November 21, 2019. This rule will go into effect thirty days after publication in the City Record.

### **Statement of Basis and Purpose**

- **Rule changes related to definitions (§ 1 below).**  
This amendment to the Procurement Policy Board Rules (“PPB Rules”) adds a new definition for the term “State-certified M/WBE” to effectuate the rule changes described below. This amendment also clarifies the definition of the term “M/WBE.”
- **Rule changes related to a Minority or Women-Owned Business Enterprise (“M/WBE”) scoring preference applicable to competitive sealed bids (§ 2 below).**  
This amendment to the PPB Rules expands application of the best value competitive sealed bid price preference mechanism to both City and State-certified M/WBEs. This amendment also allows agencies to adjust or suspend this price preference with the approval of the Citywide Chief Procurement Officer (“CCPO”). This amendment exercises authority granted to the City by Chapter 504 of the Laws of 2017 and Chapter 19 of the Laws of 2018 and codified under New York City Charter Section 311(i)(2).
- **Rule changes related to an M/WBE scoring preference applicable to competitive sealed proposals (§§ 3-5 below).** This amendment to the PPB Rules expands application of the best value competitive sealed proposal point or price preference provisions to both City and State-certified M/WBEs and mandates its usage for both professional and construction-related consulting services. Additionally, this amendment also allows agencies to adjust or suspend this point or price preference with the CCPO’s approval. This amendment exercises authority granted to the City by Chapter 504 of the Laws of 2017 and Chapter 19 of the Laws of 2018 and codified under New York City Charter Section 311(i)(2).
- **Rule changes related to expansion of the M/WBE Noncompetitive Small Purchase Mechanism (§§ 6-7 below).** This amendment to the PPB Rules allows agencies to use the M/WBE Noncompetitive Small Purchase mechanism to make purchases not in excess of \$500,000. This amendment also expands the scope of applicability of the M/WBE Small Purchase mechanism, allowing agencies to use this mechanism to procure construction services as well. This amendment exercises authority granted to the City by Chapter 98 of the Laws of 2019 and codified under New York City Charter Section 311(i)(1).

New material is underlined.

[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. SUBDIVISION (e) OF SECTION 1-01 OF CHAPTER 1 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED BY REVISING THE DEFINITION OF “M/WBE” AND BY ADDING A NEW DEFINITION OF “STATE-CERTIFIED M/WBE,” IN APPROPRIATE ALPHABETICAL ORDER, TO READ AS FOLLOWS:**

M/WBE. An acronym that stands for Minority and Women Owned Business Enterprise. A business enterprise authorized to do business in the State that has been certified by the program established pursuant to §1304 of the New York City Charter, including sole proprietorships, partnerships, and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens who are either minority group members or women, (ii) the ownership interest of such person is real, substantial, and continuing, and (iii) such persons have and exercise the authority to control independently the day-to-day business decisions of the enterprise. The term M/WBE, as used in these Rules, does not include entities that are solely State-certified M/WBEs and do not meet the criteria set forth in this definition of M/WBE.

State-certified M/WBE. Any entity certified as a Minority and Women Owned Business Enterprise pursuant to article fifteen-a of the executive law.

**SECTION 2. SUBPARAGRAPH (iv) OF PARAGRAPH (1) OF SUBDIVISION (O) OF SECTION 3-02 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK, IS AMENDED TO READ AS FOLLOWS:**

(iv) If award will be made based on best value, a [certified M/WBE in a group for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code must,] vendor that is an M/WBE or State-certified M/WBE must, except with the [permission] approval of the CCPO, be given a price preference of 10% and will be evaluated as if the bid price were 10% lower. A price preference of a different percentage may be given with approval from the CCPO. The price preference percentage, if any, shall be included in the IFB.

**SECTION 3. PARAGRAPH 1 OF SUBDIVISION (a) OF SECTION 3-03 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK, IS AMENDED TO READ AS FOLLOWS:**

- (1) statement that the contract award will be made to the responsible proposer whose proposal represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP, including the quantitative preference to be provided to proposals submitted by [certified M/WBEs for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code] vendors that are M/WBEs or State-certified M/WBEs;

**SECTION 4. THE INTRODUCTORY PARAGRAPHS OF SUBDIVISION (g) OF SECTION 3-03 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK, IS AMENDED TO READ AS FOLLOWS:**

(g) **Evaluation Process.** Award, if any, must be made to the responsible proposer whose proposal represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP. In evaluating the proposals, the agency may consider only price and the criteria set forth in the RFP. In considering price, the agency may use methods such as ranking technically viable proposals by price, evaluating price per technical point, or evaluating proposals in accordance with another combination of price and technical merit. Such methods may result in the agency selecting the highest technically rated proposer over another technically qualified proposer who offered a lower fee as a result of factors including, but not limited to, the selected vendor's superior technical skill and expertise, increased likelihood of timely completion, and/or ability to manage several projects simultaneously with lower overall costs to the City, including costs in City personnel time and consultants. However, for construction-related consulting services, including those procured through multiple award task orders, the agency shall rank proposers by technical merit, and then consider price by negotiating a fair and reasonable price with the highest technically ranked proposer(s). In ranking proposers for construction-related consultant services by technical merit, agencies must, except with the approval of the CCPO, provide a point preference of five percent (5%) of the total technical points earned to all proposers that are M/WBEs or State-certified M/WBEs before ranking proposers by technical merit. The point preference percentage, if any, shall be included in the RFP. Other methods for considering price, including using fee curves based on market-derived data with appropriate consideration of complexity, or evaluating proposals in accordance with another combination of price, [and] technical merit and proposers' M/WBE or State-certified M/WBE status, may be used for construction-related consulting services only with the written approval of the CCPO.

**SECTION 5. PARAGRAPH (6) OF SUBDIVISION (g) OF SECTION 3-03 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK, IS AMENDED TO READ AS FOLLOWS:**

(6) Contract proposals from vendors [certified] that are M/WBEs or State-certified M/WBEs for the purchase of goods, and standard and professional services except for construction-related consulting services. Proposals submitted by [certified] such M/WBEs or State-certified M/WBEs [in a group for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code] must, except with the [permission] approval of the CCPO, be provided one of following quantitative preferences, as determined by the ACCO:

- (i) Ten percent (10%), or such other percentage approved by the CCPO, of the total technical points earned in the evaluation of the proposal; or
- (ii) If such proposal's score was above a minimum threshold set forth in the RFP for quality on the weighted criteria as established in the solicitation, either a price preference of ten percent (10%), or such other percentage approved by the CCPO, or a point preference of ten percent (10%) of the total technical points earned in the evaluation of its proposal, or such other percentage approved by the CCPO, as to be determined by the ACCO.

The point or price preference percentage, if any, shall be included in the RFP.

**SECTION 6. SUBDIVISION (a) OF SECTION 3-08 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK, IS AMENDED TO READ AS FOLLOWS:**

(a) Definition. Small purchases are those procurements in value of not more than \$100,000 or those procurements made, pursuant to subparagraph (c)(1)(iv) below, in value of not more than [~~\$150,000~~] \$500,000. This collectively shall be known as the small purchase limit. Procurements over \$100,000 in value that are not made, pursuant to subparagraph (c)(1)(iv) below, shall not be within the small purchase limit.

**SECTION 7. SUBPARAGRAPH (iv) OF PARAGRAPH (1) OF SUBDIVISION (c) OF SECTION 3-08 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK, IS AMENDED TO READ AS FOLLOWS:**

(iv) *M/WBE Noncompetitive Small Purchases.* No competition is required for the procurement of goods, [and] services, and construction from M/WBE vendors, except that in making purchases pursuant to this subparagraph, the Contracting Officer must attempt to obtain at least three price quotes from M/WBE vendors or document their inability to do so. The Contracting Officer must ensure that the noncompetitive price selected is reasonable and that purchases are distributed appropriately among responsible M/WBE vendors. Agencies shall not use this subparagraph to make any purchase for goods, services or construction, the value of which is less than or equal to [~~\$20,000~~] the applicable micropurchase limits set in subparagraph (c)(1)(ii) above, or to make any purchase the value of which exceeds [~~\$150,000~~] \$500,000. Additionally, agencies shall not make purchases[,] pursuant to this subparagraph for human services [or construction].

**SECTION 8. THIS RULE TAKES EFFECT THIRTY DAYS AFTER PUBLICATION IN THE CITY RECORD.**