

## Statement of Basis and Purpose of Proposed Rule

These proposed Procurement Policy Board (PPB) amendments would update the provisions of the PPB Rules relating to agency performance evaluations of vendors.

The PPB is proposing amendments to PPB Rule § 4-01 in order to clarify the criteria for performance evaluations, to add a timeframe for the completion of agency performance evaluations, to clarify exemptions for performance evaluations, and to outline the agency's responsibilities after a performance evaluation.

Section 1 of this proposed rule would amend PPB Rule § 4-01(b) to add a timeframe for the completion of agency performance evaluations. This amendment would require performance evaluations to be completed within 90 days after the first anniversary of the contract start date. This rule would also amend PPB Rule § 4-01(a) to include the current § 4-01(e) on Client Services. This change will reduce confusion on the criteria for performance evaluations.

Additionally, this amendment would create a new PPB Rule § 4-01(c) to clarify exemptions for performance evaluations. This amendment would also create a new PPB Rule § 4-01(d) to provide greater clarity on the agency's responsibility after a performance evaluation and vendor's response.

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. A [P]performance evaluation shall:

(1) conform to the requirements of the contract, including, but not limited to, quality of performance, [and] 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 the unannounced site visits 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. 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.

(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 must have completed a performance evaluation within the preceding 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) 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.

(d) Report and vendor response. The evaluation and supporting documentation shall be incorporated in a report. The agency shall maintain documentation which supports the performance evaluation and report entered into the centralized computerized database. 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 respond [in writing] to the agency in writing. Such response shall 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.

(2) The agency shall provide a written response to the vendor's response to the evaluation report. The vendor will not be entitled to provide additional responses.

(3) A performance evaluation that results in an unsatisfactory overall rating shall be entered as a caution in the PASSPort database to comport with Section 2-08(d)(2) of these rules.

[The CCPO shall establish a centralized computerized database for storage and retrieval of the evaluation].

[(d)] (e) 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.]