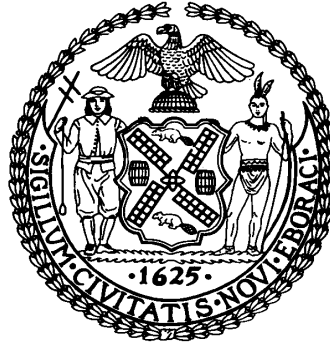


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**THE COUNCIL**

**REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

Robert Newman, Legislative Director  
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**COMMITTEE ON CONTRACTS**

Council Member Darlene Mealy, Chair

**April 30, 2013**

**RES. NO. 1739:** By Council Member Mealy

**TITLE:** Resolution adopting the rule amendments of the Procurement Policy Board to raise the micropurchase limit.

## **Introduction**

On April 30, 2013, the Committee on Contracts (the Committee), chaired by Council Member Darlene Mealy, will meet to consider Res. No. 1739, which would ratify rule amendments adopted by the Procurement Policy Board (PPB) on April 8, 2013 to increase the limit for the City’s smallest contracts, micropurchases. Representatives from the Mayor’s Office of Contracts Services, the New York City Comptroller, advocacy organizations, and interested members of the community are invited to testify.

## **Background**

State procurement laws prescribe bidding on public contracts in order to foster competition so that quality goods and services may be acquired at the lowest possible price.<sup>1</sup> In addition to potential cost savings, competitive bidding “serves to prevent favoritism, improvidence, fraud, and corruption in the awarding of public contracts.”<sup>2</sup>

While the competitive bidding process yields these benefits, it requires considerable time and resources. When contracts are small, the costs of competitive bidding may outweigh its benefits. In the interest of preserving such resources, state law permits municipalities to establish rules to govern purchases for which competitive bidding is not required.<sup>3</sup>

Section 3-08 of the PPB Rules offers guidance for purchases below \$100,000, known as “small purchases.”<sup>4</sup> The section sets parameters for a more limited competitive

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<sup>1</sup> See General Municipal Law §103, §104; Office of the New York State Comptroller, Division of Local Government and School Accountability, *Local Government Management Guide: Seeking Competition in Procurement*, available at <http://www.osc.state.ny.us/localgov/pubs/lmgmg/seekingcompetition.pdf>.

<sup>2</sup> Council of City of New York v. Bloomberg, 6 N.Y.3d 380, 391 (2006).

<sup>3</sup> See General Municipal Law §104-b.

<sup>4</sup> See New York City Procurement Policy Board Rules §3-08.

process to attend small purchases.<sup>5</sup> For the subset of the smallest of small purchases, known as “micropurchases,” the PPB allows agencies to procure goods and services with no competition.<sup>6</sup>

While no competition is required, agency contracting officers must ensure that the prices for the noncompetitive procurements are reasonable and that such purchases are not concentrated with select vendors, but rather distributed among responsible vendors.<sup>7</sup> Further, the rules preclude agencies from artificially dividing contracts in order to meet small purchase and micropurchase limits.<sup>8</sup> With these safeguards, the PPB seeks to uphold the state procurement tenets of protecting the public fisc and minimizing corruption, favoritism, and fraud.<sup>9</sup>

Because small purchases require little or no competition, the New York City Charter mandates that the Council join the PPB in establishing small purchase limits, including that of noncompetitive micropurchases.<sup>10</sup>

The Council and PPB last revised the micropurchase limit in 2003, increasing the limit from \$2,500 to \$5,000.<sup>11</sup> Micropurchases with a limit of \$5,000 have constituted a small fraction of citywide procurement dollars each year, accounting, for example, for 0.4% in Fiscal Years 2012 and 2011, and 0.3% in Fiscal Year 2010.<sup>12</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *See* New York City Procurement Policy Board Rules §3-08(c)(ii).

<sup>7</sup> *Id.*

<sup>8</sup> *See* New York City Procurement Policy Board Rules §3-08(b).

<sup>9</sup> *Supra* note 3.

<sup>10</sup> *See* New York City Charter §314(a).

<sup>11</sup> *See* Committee Report, *Res. No. 699-2003*, Committee on Contracts; Hearing Transcript, *Res. No. 699-2003*, adopted Feb. 26, 2003.

<sup>12</sup> *See* New York City Mayor’s Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2012*, at 7; New York City Mayor’s Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2011*, at 6; New York City Mayor’s Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2010*, at 5.

Micropurchases offer distinct advantages to contracting agencies. As suggested above, micropurchases afford agencies the ability to acquire goods and services efficiently, eliminating the time and resources required by the bidding process. Micropurchases also allow agencies to distribute contracting opportunities across an array of vendors. Indeed, agencies are often able to award contracts to minority and women-owned business enterprises (MWBES) that may be shut out of larger procurement opportunities.<sup>13</sup>

### **Increasing the Micropurchase Limit**

On April 8, 2013, the PPB voted unanimously to adopt a rule that would increase the micropurchase limit from \$5,000 to \$20,000.<sup>14</sup> Res. No. 1739 would ratify that increase.<sup>15</sup>

Increasing the micropurchase limit causes concern to the extent that it would broaden the scope of noncompetitive contracts. However, micropurchases capped at \$20,000 would remain subject to the rules that require reasonable costs and appropriate distribution across vendors.<sup>16</sup> In addition to those safeguards, pursuant to Local Law 9 of 2002, which was enacted by the Council to increase transparency of limited competition small purchases, the Council would receive reports enabling it to monitor all micropurchase contracts above \$10,000.<sup>17</sup>

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<sup>13</sup> See, e.g., New York City Mayor's Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2012*, at 67. MWBEs accounted for 14.8% of micropurchases in Fiscal Year 2009, 18.0% in Fiscal Year 2010, 19.7% in Fiscal Year 2011, and 25.6% in Fiscal Year 2012.

<sup>14</sup> See Information on file with Committee staff.

<sup>15</sup> See Res. No. 1739, attached at pp. 6-8.

<sup>16</sup> *Supra* note 6.

<sup>17</sup> See Committee Report, *Proposed Int. No. 112-A*, Committee on Contracts, June 4, 2012; New York City Charter §314.

**Res. No. 1739**

Res. No. 1739 would ratify the PPB's adoption of amendments to Procurement Policy Board Rule §3-08 to increase the micropurchase limit to \$20,000 from \$5,000.

With respect to micropurchases, in addition to increasing the limit, the adopted amendment: (1) adds a subheading to §3-08(c)(ii) to identify micropurchases as such; and (2) makes clear that MWBEs should be included among the responsible vendors to which micropurchases are appropriately distributed.

Res. No. 1739

Resolution adopting the rule amendment of the Procurement Policy Board to raise the micropurchase limit to \$20,000.

By Council Member Mealy

Whereas, It has been ten years since the micropurchase limit has been increased for the City of New York; and

Whereas, On April 8, 2013, the Procurement Policy Board (“PPB”) adopted a rule amendment raising the micropurchase limit under Section 3-08 of the PPB Rules, for which no competition is required, from five thousand dollars (\$5,000) to twenty thousand dollars (\$20,000); and

Whereas, Raising the micropurchase limit will significantly reduce processing time for relatively small procurements and allow agencies to process these procurements in a more efficient and flexible manner; and

Whereas, As indicated by the Procurement Policy Board, raising the micropurchase limit will also increase the ability of New York City agencies to meet the goals set under the Minority and Women Owned Enterprise (“MWBE”) Program for the proportion of City contracts that are awarded to certified MWBE firms; and

Whereas, Section 314 of the New York City Charter requires concurrent action by the Council of the City of New York and the PPB to establish dollar limits for such small purchases; and

Whereas, A copy of the adopted PPB rule amendment is attached hereto and incorporated herein; now, therefore, be it

Resolved, That the Council of the City of New York adopts the rule amendment of the Procurement Policy Board to raise the micropurchase limit to \$20,000.

**Section 1. Section 3-08 of Chapter 3 of Title 9 of the Rules of the City of New York is amended as follows:**

§3-08 Small Purchases

(a) Definition. Small purchases are those procurements in value of not more than \$100,000. This shall be known as the small purchase limit.

(b) Application. A procurement shall not be artificially divided in order to meet the requirements of this section. Changes to and/or renewals of small purchases shall not bring the total value of the procurement to an amount greater than the small purchase limits.

(c) Scope.

(1) Competition Objective.

(i) Public notice of solicitation and award, presolicitation review report, Recommendation for Award, vendor protests, written notice to the low bidder or offeror of non-responsiveness, VENDEX Questionnaire (unless the aggregate value of purchases, franchises, and concessions awarded to that vendor including this one during the immediately preceding twelve-month period equals or exceeds \$100,000), and public hearing shall not be required for small purchases awarded pursuant to this section.

(ii) Micropurchases. For procurements the value of which is [~~\$5,000~~] \$20,000 or less, no competition is required except that in making purchases below this limit, Contracting Officers shall ensure that the noncompetitive price is reasonable and that purchases are distributed appropriately among responsible vendors, including M/WBE vendors. Documentation of such purchases shall identify the vendor the item was purchased from, the item purchased, and the amount paid.

(iii) For procurements in value over [~~\$5,000~~] \$20,000 through the small purchase limits, at least five vendors shall be solicited at random from the appropriate citywide small purchases bidders list established by the CCPO for the particular goods, services, construction, or construction-related services being purchased, except where the bidders list consists of fewer than five vendors, in which case all vendors on the list shall be solicited. Agencies may additionally employ any small purchase technique sanctioned by DSBS that is not otherwise in violation of these Rules. The agency may solicit additional vendors but only with the approval of the CCPO. Responsive

bids or offers shall be obtained from at least two vendors. For purposes of this section, a response of “no bid” is not a responsive bid. If only one responsive bid or offer is received in response to a solicitation, an award may be made to that vendor if the Contracting Officer determines that the price submitted is fair and reasonable and that other vendors had reasonable opportunity to respond.

(2) Solicitation Methods and Use.

(i) Agencies shall use the following solicitation methods for] For small purchases valued at more than [\$5,000] \$20,000, agencies shall use [:

(A) for small purchases of goods valued at not more than \$25,000, an oral or written solicitation describing the requirements, or

(B) for small purchases of goods valued at more than \$25,000, a written solicitation describing the requirements, and

(C) for small purchases of services,] a written solicitation describing the requirements[.

(ii) An oral or written solicitation for a small purchase], which shall contain, at a minimum:

[(A)](i) a description of the item or service requested;

[(B)](ii) time, date, place, and form of requested response;

[(C)](iii) basis for award; and

[(D)](iv) name and telephone number of the Contracting Officer to whom inquiries may be directed.

(d) Award. Small purchases valued at over [\$5,000] \$20,000 shall be awarded to the lowest responsive and responsible bidder or to the responsive and responsible offeror that has made the most advantageous offer. After such determination has been made and all necessary approvals have been obtained, the Contracting Officer shall issue a purchase order or contract, as appropriate, to the successful bidder or offeror.