



July 19, 2018

The American Council of Engineering Companies of New York (ACEC New York) appreciates the opportunity to share the following comments regarding the Procurement Policy Board's (PPB) Proposed Rule to create an "M/WBE Noncompetitive Small Purchase" mechanism. This amendment to the PPB Rules would allow City agencies to make purchases of goods and services from M/WBEs in amounts up to \$150,000 without competition.

ACEC New York supports the ideals and intent of the City's M/WBE Program but we do not support the proposed rule in its current form. Should it remain in its current form, we request that it be revised to exclude construction-related services including engineering from the rule, just as "human services" and "construction" have been excluded.

We have two main objections to the rule as follows:

1. It erodes the Qualifications-Based Selection (QBS) procurement method.
2. We are concerned that artificial \$150,000 contracts will be created from naturally occurring larger contracts.

The proposal is inconsistent with the existing Qualifications-Based Selection (QBS) procurement method which the PPB adopted in 2006 as the method for selecting design professionals for City construction projects. QBS designates superior technical qualifications and experience as the paramount basis for selecting engineering professionals to design public projects. The City first adopted QBS because, among other reasons, it found that using this procurement method expanded competition; resulted in responding firms having strong credentials; successfully attracted firms who had not had prior contracts with the City, including a number of M/WBEs; and generally increased design excellence, to the benefit of the City.

The proposal appears to give City agencies unfettered discretion as to whom is awarded sizeable City design contracts, up to \$150,000 in value. The rule provides that contracts of this size may be awarded by agencies with "no competition" so long as the agency "ensure that the noncompetitive price is reasonable and that purchases are distributed appropriately among responsible M/WBE vendors." Alternatively, ACEC New York does support competitive set-aside contracts for M/WBEs.

The criteria set forth in the proposal to guide City agencies' selection of vendors is so vague that it could result in engineering firms being awarded contracts that are beyond their technical experience. In this way, the proposed rule does not ensure the best technical proposals will be selected, nor does it ensure the City will receive best value. Should the rule proceed and be adopted, ACEC New York recommends that it be revised to at least prescribe more-detailed direction to agencies with regard to the selection criteria they must follow to award City contracts.

In addition, ACEC New York would like the language to be amended to prevent an agency from using this PPB rule to artificially create multiple contracts of project scopes or phases that typically occur as one contract with a team of firms.

For these reasons, we respectfully request that you not adopt the proposed rule in its current form.

For further information please contact:

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***The American Council of Engineering Companies of New York (ACEC New York)** is the voice of the professional engineering community, representing 280 member firms throughout New York State that collectively employ close to 25,000 people statewide, with a concentrated presence of firms located in New York City. Our members plan and design the structural, mechanical, electrical, civil, environmental, plumbing, fire protection and technology systems for the city's buildings and infrastructure.*