



American Council of Engineering Companies of New York

**Testimony of the American Council of Engineering Companies of New York
Concerns about the Community Hiring Rule as Drafted
November 2024**

About ACEC New York: The American Council of Engineering Companies of New York (ACEC New York) is an association representing nearly 300 licensed engineering and affiliate firms with 30,000 employees in New York. Our members design the mechanical, electrical, energy performance, structural, plumbing, civil, environmental, fire protection and technology systems of buildings and infrastructure for public and private owners across New York.

Comments to the proposed rule: Our member firms understand and generally support the idea of leveraging City contract funding for social good beyond the delivery of the highest quality engineering services.

- Advancing the public’s interest is core to a licensed design firm’s work, making sure that City infrastructure and facilities are not only safe and efficient, but also, for example, designing the built environment to support the City’s sustainability, resiliency, transportation, and affordable housing goals. Firms that contract with the City to provide engineering services also recognize the value of growing the capacity of emerging firms through MWBE contract goals and strive to constantly expand partnerships and opportunities as a professional community. Presently, about 25% of our membership are MWBE firms.
- However, we believe the Community Hiring requirements as conceived in the proposed rule are not well-designed for *engineering contracts* which, by nature and definition of the technical work they involve, are generally contracts that are serviced by *licensed professional engineers*.
- As engineers, when designing a new structure, we must always first fully understand existing conditions, as well as the impact that introducing new stresses will cause, and then determine the most thoughtful path to designing a solution that accomplishes our goal. We respectfully ask that the City adhere to this core principle in structuring the proposed rule’s details so that it is appropriately suited to the City’s engineering industry without causing unintended consequences.
- We want to first call attention to the factors identified in the proposed rule which provide valid reasons for which the contractor (ie. engineering firm) would be released from the Community Hiring requirements of the rule. The rule states, in exercising best efforts, the contractor is not required to “undertake an undue financial burden that is deemed to be excessive or unwarranted in view of factors including, but not limited to, Contractor’s

size and financial resources.” We believe this factor must be considered in the context of the *contract* size itself, not in context of the contractor’s size/financial characteristics.

- Assume, for example, a \$3 million contract for engineering services. The Proposed Rule would require six Community Hires (ie. “One Income-Based Community Hire for every \$500,000 in total value of the transaction”).
 - At the skill level required for basic administrative support positions in an engineering firm, compensation would be on the order of \$50,000 per year for salary alone, times the six required new employees. This figure does not include additional standard employee costs such as insurance, fringe benefits, training, and equipment. In this example, the salary alone cost to meet the rule’s requirement represents *10% of the contract value just for wages*. This would be substantially *all of the profit* that the engineering firm would have made on this contract.
 - The unintended consequence of this is that a smaller pool of licensed engineering firms will choose to submit proposals for City contracts containing this requirement. This might seem unlikely, but the reality is that for years there were many companies – many of whom the City sought after to participate in the engineering contract market – who opted to not pursue City engineering contracts due to them being based on lowest price. It was after the City’s adoption (in PPB rules) of Qualifications Based Selection (QBS) that this problematic trend was reversed, the pool of engineering firms proposing on city contracts expanded, and competition increased.
- Further, the rule as drafted guarantees that virtually no hires are going to come out of the Community Hiring program with the technical skills that are necessary to directly work on City engineering contracts. If a person is making 300% of the federal poverty threshold or less (per the rules definition), then they are almost certainly not a licensed professional as salaries in this profession are currently significantly higher than this level in both the public and private sector (note: there is a nationwide shortage of Professional Engineers, and there is currently significantly more demand than supply of this type of professional). Again, the core insight not reflected in the proposed rule is that the overwhelming majority of engineering firm employees who are assigned to any given City engineering contract are licensed professionals of whom few would meet the income criteria of a Community Hire.
 - This means the rule sets forth that City engineering contracts would require the hiring of non-technical employees for whom the contract itself does not create work. The rule seems to recognize this, stating: “Goal setting based on the value of the transaction would allow contractors and subcontractors to employ Community Hires in positions that are not directly related to the services provided under the particular transaction.”
 - As such, Community Hires would be placed on engineering firm payrolls without them necessarily working on the contract that required their hiring. If the City is prepared to hold engineering firms harmless and compensate them to develop these employees as an unstructured training program connected to each contract, that might provide a viable path forward. But the reality is, absent compensation to offset the cost of carrying additional employees unrelated to the given City

contract, it is unrealistic to expect engineering companies can absorb a reduction in compensation of this magnitude which equates, in many cases, to working for no profit.

- It is important to note here, additionally, that professional design fees are heavily negotiated by the City agencies, and costs are aggressively audited by the agency staffs. If the City nonetheless believes the benefits outweigh the costs, agencies must be required by MOCS and the PPB Rules to bear these direct and indirect costs.
- Finally, we also believe there needs to be additional definition in the rule to clarify various questions including:
 - How long must a Community Hire be employed by the contractor?
 - What happens if the Community Hire is terminated for cause, do they need to be replaced?
 - Is a contractor required to pay a Community Hire anything beyond a minimum wage?
 - What if the Community Hire leaves the job to pursue a different opportunity or for any other reason?
 - Is the Community Hire required to be employed for the life of the contract?

In closing, we are grateful to the Office of Community Hiring for making efforts to engage with ACEC New York and soliciting our feedback.

Considering the feedback we offer above, we respectfully request the rule not be implemented as presently drafted until we have an opportunity to further engage and work through the mentioned issues, and particularly to address the cost burden that is being proposed. Thank you.