

Notice of Adoption of Rules

Pursuant to the authority vested in the Procurement Policy Board (PPB) by Section 311 of the New York City Charter and in accordance with the requirements of Section 1043 of said Charter, the PPB has adopted amendments to Chapter 2 of Title 9 of the Rules of the City of New York.

Statement of Basis and Purpose

These Procurement Policy Board (PPB) amendments update certain provisions of the PPB Rule relating to the filing of vendor disclosure questionnaires in PASSPort, the City's digital procurement platform.

The PPB is enacting amendments to the rules governing the frequency of filing of questionnaires in PASSPort, as well as the rules governing waivers of and exemptions from filing requirements. These amendments will:

- codify current practices pursuant to which governmental and quasi-governmental bodies may be granted exemptions from PASSPort filing requirements on a contract-by-contract basis,
- allow the CCPO to grant a partial waiver of the requirements to supply specified information upon a determination that it is in the best interest of the City to award the contract to the contractor despite the inability to supply such information, and
- update the rule by replacing all references to "VENDEX" (the City's prior procurement platform) with references to "PASSPort" (the current platform).

Section 1 amends PPB Rule § 2-08(e) to provide for a disclosure exemption for government and quasi-government entities. The subdivision is also amended to replace all references to "VENDEX" with references to "PASSPort."

Section 2 amends PPB Rule § 2-08(f)(2) to replace all references to "VENDEX" with "PASSPort."

Section 3 amends PPB Rule § 2-08(g)(1) to replace all references to "VENDEX" with "PASSPort."

Section 4 amends PPB Rule § 2-08(h)(3) to replace all references to "VENDEX" with "PASSPort."

Section 5 amends PPB Rule § 2-08(o) to replace all references to "VENDEX" with "PASSPort."

Section 6 amends PPB Rule § 2-08(p) to replace all references to "VENDEX" with "PASSPort."

On May 8th, 2025, the PPB voted to initiate the rulemaking process under Citywide Administrative Procedure Act for this rule amendment. A proposed version of the rule was published in the *City Record* on May 15th, 2025. A public hearing was held on June 16th, 2025.

The PPB received one written comment at the public hearing. Upon careful consideration of the comment and in consideration of the PPB's discussions during the May public meeting, the PPB adopted the amendment on [date].

The PPB's authority to promulgate these rules is found in Sections 311 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. The heading and paragraphs (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) of subdivision (e) of section 2-08 of Title 9 of the Rules of the City of New York are amended to read as follows:

(e) [VENDEX] PASSPort questionnaire.

(2) Obligation to file questionnaires. [VENDEX questionnaires shall be completed and filed by the contractor] Each contractor must submit and file a PASSPort questionnaire at least once [within each] every three calendar [year period within which such contractor does business with the City] years. If any information disclosed in the PASSPort questionnaire has changed since the date of the contractor's last PASSPort filing, including during the term of the contract, such that the contractor's questionnaire is no longer accurate, the contractor shall update its responses in the PASSPort questionnaire to supply any changed information. Each contractor [shall] must certify that all the information [submitted within such three year period] provided in its most recent PASSPort filing is current, accurate and complete at the time of award of each contract. No contract may be awarded to a contractor who fails to complete such certification [If changes have occurred within the three year period, the contractor shall update, prior to contract award, any previously-submitted VENDEX questionnaire to supply any changed information, and shall certify that both the updated and unchanged information is current, accurate and complete.] If [VENDEX questionnaires have not been submitted] a contractor has not filed a PASSPort questionnaire within three years, [then such questionnaires shall be completed and filed] such contractor must complete and file a questionnaire as follows:

(i) by applicants, at the time of an application for inclusion on a prequalified list, provided that this requirement shall not apply to applications under HHS Accelerator pursuant to 9 RCNY § 3-16;

(ii) by contractors, when requested by an agency or by the CCPO, but in any event before the Recommendation for Award is approved or not later than:

(A) thirty days after registration of the contract in the case of a contract of whatever value if the aggregate value of City contracts, franchises, and concessions awarded to that contractor including this one during the immediately preceding twelve-month period equals or exceeds \$250,000, and

(B) thirty days after registration of the contract, where permitted pursuant to paragraphs (3) and (4) of this subdivision; or

(iii) by subcontractors, within thirty days after the ACCO has received from the prime contractor written notification of the identity of the proposed subcontractor and granted preliminary approval, if the aggregate value of City contracts, franchises, and concessions awarded that subcontractor including this one during the immediately preceding twelve-month period equals or exceeds \$250,000.

(3) Late Filing of Information: When Permitted. The [VENDEX] PASSPort questionnaire may be submitted within thirty days after registration of the contract as provided in paragraph (4) of this subdivision in the following circumstances:

(i) emergency procurements as defined by 9 RCNY § 3-06;

(ii) accelerated purchases as defined by 9 RCNY § 3-07;

(iii) on a contract-by-contract basis where the CCPO, upon the written request of the ACCO, has determined that expedited procurement action is required due to urgent circumstances;

(iv) buy-against procurements pursuant to 9 RCNY § 4-07 where the contractor has not previously submitted a [VENDEX] PASSPort questionnaire; and

(v) on a contract-by-contract basis with respect to information not required by local law where the CCPO, upon the written request of the ACCO, has determined that a specific portion of the information required by the questionnaire but not by local law is not accessible to the contractor despite good faith efforts to complete the filing in a timely fashion. The determination shall set forth with particularity the information which may be submitted late and the reasons for the later completion of the filing, and shall include the specific date by which the information [shall]must be submitted.

(4) Late Filing of Information: Required Findings. In the circumstances set forth in paragraph (3) of this subdivision, the [VENDEX] PASSPort questionnaire may instead be submitted after registration of the contract, provided that:

(i) the ACCO has notified the contractor in writing of its obligation to submit the [VENDEX] PASSPort questionnaire as set forth in subdivision (e)(2) above;

(ii) the ACCO has determined that sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility prior to receipt of the questionnaire; and

(iii) in addition, where the basis for the delayed submittal is an expedited procurement action due to urgent circumstances, the ACCO must provide a separate additional determination setting forth the specific documented reasons it is not feasible for the contractor to complete all or some specific portion of the [VENDEX] PASSPort questionnaire as set forth in subdivision (e)(2) above. The ACCO's determination shall include the name and telephone number of the authorized representative of the contractor who provided information on which the ACCO relied in making the non-feasibility determination.

(5) [Exemption: Information Not Required by Local Law] Waiver: Limited Exception in the Best Interest of the City. On a contract-by-contract basis, where a contractor demonstrates compelling reasons that it is not feasible to supply a specifically identified portion of information which is required by the questionnaire but not by local law, the CCPO may [exempt a contractor from] waive the requirement to supply that portion of the required information when such waiver is in the best interest of the City[.]. Such a waiver may be granted by the CCPO upon the written application of the ACCO setting forth with particularity:

- (i) the efforts to obtain the required information;
- (ii) the name and telephone number of the authorized representative of the contractor who made the request for [exemption] waiver on behalf of the contractor;
- (iii) the information to be covered by the [exemption] waiver;
- (iv) the compelling reasons why [an exemption] a waiver should be granted in this case, including why the circumstances are such that it is in the best interests of the City that the contract be awarded to this contractor; and
- (v) the basis for finding the sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility absent the exempted information. [In these cases the CCPO shall state the reasons that granting the exemption serves the best interests of the City and shall provide a copy of this determination to the Comptroller within five days]

The CCPO has the sole discretion to grant a waiver and to determine which portion of the required information will be waived. In making such determination, the CCPO will consider whether the contractor has made sufficient efforts to supply the information required to be disclosed in the questionnaire. Where a waiver is granted, the CCPO will issue a written determination, setting forth the details of the waiver and a statement of the specific reasons why granting such a waiver serves the best interests of the City, and include that determination in the PASSPort database. The CCPO will provide a copy of this determination to the Comptroller within five calendar days of issuing such determination. Any waiver granted pursuant to this paragraph is limited to the specific contract identified in the waiver application. Where an ACCO seeks a waiver with respect to a new contract, a separate application for a waiver must be submitted.

(6) [Exemption:] Waiver: Sole Source. In the case of a specific contract awarded in accordance with the sole source provision of Section 3-05 of these Rules where a contractor refuses to supply some portion of the required information, but the need for the goods, services, or construction is such that it is in the best interests of the City that the contract be awarded, the CCPO may [exempt] waive [the contractor from the requirement for some] a specifically identified portion of information required by local law concerning the creation and maintenance of a computerized database upon the written application of the ACCO setting forth with particularity:

- (i) the efforts to obtain the required information;
- (ii) the name and telephone number of the authorized representative of the contractor who refused, on behalf of the contractor, to supply the required information;
- (iii) the information to be covered by the [exemption] waiver;
- (iv) the reasons why [an exemption] a waiver should be granted in this case; and

(v) the basis for finding that sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility absent the [exempted] waived information.

(7) Exemption: Entities Not Required to Complete Disclosures. Governmental and quasi-governmental entities may be exempted from the requirement to file PASSPort questionnaires on a contract-by-contract basis. Such an exemption may be granted by the CCPO upon the written application of the ACCO setting forth with particularity:

- (i) The name and telephone number of the authorized representative of the contractor who made the request for exemption on behalf of the entity;
- (ii) the number of members of the entity's Board of Directors or Board of Trustees, including any members appointed by an elected official;
- (iii) any other information regarding the public's review, direction, or control over the entity's operations;
- (iv) the compelling reasons why it is in the best interests of the City to grant the exemption and award the contract to this contractor;
- (v) the basis for the ACCO's determination that there is sufficient information concerning the prospective contractor available to allow a determination of responsibility to be made absent the exempted filing, including whether the entity's employees are subject to any other public filing requirements; and
- (vi) any other information demonstrating that the prospective contractor is otherwise accountable to the public.

Where an exemption is granted, the CCPO will issue a written determination. The CCPO will provide a copy of this determination to the Comptroller within five days of issuing such determination. Any exemption granted pursuant to this paragraph is limited to the specific contract identified in the application. Where an ACCO seeks an exemption with respect to a new contract, a separate application for a waiver must be submitted.

[7] (8) Reporting Requirement for Late Filings, Waivers, and Exemptions. A copy of the written request of the ACCO and the determination of the CCPO permitting late filing of required information pursuant to [subdivision (e)(3) and (4)] paragraphs (3) and (4) of this [section] subdivision, [or] granting [an exemption] a waiver pursuant to [subdivision (e)(5) and (6)] paragraphs (5) and (6) of this [section] subdivision, or granting an exemption pursuant to paragraph (7) of this subdivision [shall] must be filed by the CCPO with the Comptroller within five days after it is made or approved by the CCPO.

[(8)] (9) Contract terms and conditions.

(i) Late filing. Whenever the CCPO has permitted the filing of some or all of the required information within thirty days after the registration of the contract, the contract shall contain a clause requiring the submission of the required information within the required time period as a material term and condition of the contract and permitting termination without penalty to the City for violation of the condition, or [in the event that]if:

(A) the Mayor or his/her designee determines on the basis of the belatedly filed information that it is in the best interest of the City to terminate the contract, and/or

(B) the Comptroller or his/her designee determines that the belatedly filed information reveals matters which if provided earlier would have provided a basis for an objection to registration of the contract by the Comptroller and the Mayor or his/her designee determines that he/she would have agreed with such determination and therefore it is in the best interest of the City to terminate the contract.

(ii) Subcontractors. Where appropriate, City contracts shall contain a clause requiring prime contractors to notify subcontractors of their obligation to complete and file [VENDEX] PASSPort Questionnaires within thirty days after the ACCO has granted preliminary approval of the identified subcontractor, if the aggregate value of City contracts, franchises, and concessions awarded to a subcontractor during the immediately preceding twelve-month period equals or exceeds \$250,000.

[(9)] (10) Failure to Submit Information as Required: Consequences. Whenever a late filing of required information has been permitted in accordance with subdivision (e)(3) and (4) of this section and the contractor has failed to submit the required information within the required time period, that fact shall be communicated to the CCPO and the Comptroller immediately and shall be included within the [VENDEX data base] PASSPort database. Until such time as the required information has been filed with the CCPO,

- (i) no further contract shall be awarded to that contractor,
- (ii) the contractor shall be ineligible to bid or propose or otherwise be awarded a further contract, and
- (iii) no payments shall be made to the contractor for performance pursuant to that contract unless authorized in writing by the CCPO.

[(10)] (11) The Procurement Policy Board shall provide the City Council with periodic reports concerning permission for late filings and exemptions at intervals and with contents agreed upon by the Procurement Policy Board and the City Council.

[(11)] (12) The questionnaire responses shall be entered into the citywide computerized [VENDEX] PASSPort database no later than the completion of the Recommendation for Award.

§2. Paragraph 2 of subdivision (f) of section 2-08 of Title 9 of the Rules of the City of New York is amended to read as follows:

(2) For any contract or subcontract that is subject to the Vendor Name Check process set forth in section (f)(1), the CCPO may charge a fee for the administration of the [VENDEX] PASSPort system, including the Vendor Name Check process, in the amount of \$175 for contracts of an estimated value less than or equal to \$1,000,000 and \$350 for contracts of an estimated value greater than \$1,000,000. Such fee will be charged against payments made to the vendor on the contract at issue. The timing of the contract award shall not be affected by a fee incurred but not yet paid by the vendor. A prime vendor is responsible for the payment of fees for any subcontractors of the vendor for which Vendor Name Check requests are made. Nothing contained in these Rules shall prohibit a prime vendor from recovering from its subcontractors the amount of such fees attributable to those subcontractors. The [VENDEX] PASSPort

administrative fee may be waived at the discretion of the CCPO if it is determined that such waiver is in the City's best interest.

§3. Subparagraphs (i), (ii) and (iv) of paragraph 1 of subdivision (g) of section 2-08 of Title 9 of the Rules of the City of New York are amended to read as follows:

- (i) the [VENDEX] PASSPort database of debarred, suspended, and ineligible contractors;
- (ii) [VENDEX] PASSPort and other records of evaluations of performance, as well as verifiable knowledge of contracting and audit personnel;

- (iv) information supplied by the prospective contractor, including bid or proposal information, [VENDEX] PASSPort and prequalification questionnaire replies, financial data, information on production equipment, and personnel information;

§4. Paragraph 3 of subdivision (h) of section 2-08 of Title 9 of the Rules of the City of New York is amended to read as follows:

- (3) The determination of non-responsibility shall be included in the [VENDEX] PASSPort database.

§5. Subdivision (o) of section 2-08 of Title 9 of the Rules of the City of New York is amended to read as follows:

- (o) Documentation. Documents reflecting the agency determination of non-responsibility and any appeal and decision with respect to appeal, and evidence of having supplied written notifications as required by these Rules, shall be sent to the CCPO for inclusion in the [VENDEX] PASSPort database.

§6. The introductory paragraph and paragraphs (4), (5) and (6) of subdivision (p) of section 2-08 of Title 9 of the Rules of the City of New York are amended to read as follows:

- (p) Rehabilitation of Vendors. An application for a declaration of rehabilitation may be made by any vendor who has been found non-responsible by one or more City agencies, if such vendor has either declined to appeal or exhausted the process for appealing such non-responsibility determination(s) as set forth in this section, or by any vendor that is the subject of any unfavorable responsibility information recorded in the [VENDEX] PASSPort database as a caution(s). A declaration of rehabilitation will not result in deletion of the underlying non-responsibility determination or caution from the [VENDEX] PASSPort database, but a summary of such declaration or of any decision denying such an application shall be entered into the [VENDEX] PASSPort database for consideration by agency Contracting Officers in making future responsibility determinations. In making responsibility determinations, Contracting Officers may rely upon the declaration of rehabilitation in lieu of requiring a vendor to explain negative responsibility information in accordance with subdivision (g)(2) of this section.

(4) Notice to Agencies. The applicant [shall] must concurrently provide a copy of its application for rehabilitation to the Department of Investigation, the Comptroller and to the Contracting Officer of any agency that found such applicant non-responsible or requested that negative responsibility information be entered as a caution in the [VENDEX] PASSPort database.

(5) CCPO Decision. The CCPO shall review the filing, shall consult with the Department of Investigation and may consult with any other relevant government agency, prior to making a final decision concerning the application for a declaration of rehabilitation. The CCPO may seek additional information from the applicant. Upon review of the filing and any subsequent submission by the applicant, the CCPO shall issue a decision granting or denying the application for declaration of rehabilitation. In making such decision, the CCPO may consider a broad range of factors, which may include, but is not limited to, the following:

- (i) The public policy expressed in these Rules that the vendors have the capability in all respects to perform fully the requirements of public contracting and the business integrity to justify the award of public tax dollars;
- (ii) The bearing of any criminal, false, fraudulent or other activities of the vendor, its affiliates and current and past owners, principals, employees, or their associates or other persons or entities on the skill, judgment and integrity of the vendor or on its fitness or ability to perform as a public contractor, and the time elapsed since and seriousness of such activities;
- (iii) Any information produced by the vendor or available from other sources relevant to its rehabilitation, including the adequacy of the remedies or corrective actions identified by the applicant, or to any other factor bearing on the vendor's skill, judgment and integrity or its fitness or ability to perform as a public contractor.

The CCPO may condition any declaration of rehabilitation upon the applicant's completion of the specific additional corrective actions, if any, set forth in such declaration. The CCPO decision granting or denying the application for declaration of rehabilitation shall be final and a record of the determination shall be included in the [VENDEX] PASSPort database.

(6) Notification of Decision. A copy of the CCPO decision granting or denying the application for declaration of rehabilitation shall be mailed to the vendor, with copies to the Department of Investigation, the Comptroller and the Contracting Officer of any agency that found such applicant non-responsible or requested that negative responsibility information be entered as a caution in the [VENDEX] PASSPort database.

