

PROPOSED RULE AMENDMENT

The Procurement Policy Board intends to promulgate an amendment to **Chapter 3 Methods of Source Selection** of its Rules pursuant to Section 311 of the New York City Charter.

Statement of Basis and Purpose

In order to increase the use by New York City's retirement systems of successful smaller investment managers, the proposed amendment will permit one or more of the New York City retirement systems to use a negotiated acquisition mechanism in order to allow direct contracts with a vendor that has successfully provided investment services management services to such system under an emerging manager program.

The Rule Amendments:

New material is underlined and deletions are [bracketed].

Section 2. Subsection (c) of section 3-04 of Chapter 3 of Title 9 of the Rules of the City of New York is amended to read as follows:

(c) Investment Services. [The preferred method for procuring investment services is competitive sealed proposals.] Negotiated acquisition may be used for one or more City [pension funds or variable supplements funds] Retirement Systems to award a contract to a vendor that has been providing investment management services to the Retirement System(s) under a program to foster the growth of small or new investment managers ("the [emerging manager program] Emerging Manager Program") as a manager or submanager, under the following conditions:

(1) the fund(s) have determined pursuant to a vote of its or their trustees, upon the presentation by the Comptroller or designee of his or her recommendation and after having been provided with a presolicitation report and such information from [an] the relevant asset class investment consultant(s) [as the fund(s) deem necessary] of the Retirement System(s), that it is in the best interest of the fund(s) and the City for the Comptroller to award a contract through negotiated acquisition;

(2) [(i) the term of an emerging manager investment management contract (including all renewal and extension periods) will expire or the emerging manager investment contract within which the submanager provided services has expired or been terminated,] the manager or submanager has provided investment management services to the Pension Funds under the Emerging Manager Program for a continuous period of at least twelve months, and where, if such investment management services have ended due to a contract expiration or termination, the contract ended no earlier than three (3) months prior to publication of the notice of intent to enter into negotiations;

(3) the services provided by the manager or submanager are still required;

(4) [the assets under management have grown beyond the fund's maximum selection eligibility level so that the manager or submanager could not be selected to participate in the emerging manager program

(5) in the case of a submanager, the assets under management of the submanager have grown sufficiently to make it eligible under the Comptroller's guidelines for a direct contract;

(6) there is no competitive sealed proposals or Investment Manager Search process for the manager or submanager's eligibility level and type of investment service in which the manager or submanager could participate or could have participated so that the services that it provides would not be disrupted;

[(7)] (5) the term [or] of the new contract shall not extend beyond the commencement date of contracts awarded pursuant to a competitive sealed proposal or Investment Manager Search process for a class of managers applicable to the manager or submanager for which the manager or submanager became eligible to compete[, and in no event shall be longer than three years (including all renewal and extension periods)];

[(8)](6) over the immediately preceding market cycle of at least three (3) years, the manager or submanager has [both (i) exceeded the performance of generally accepted indices applicable to the investment services provided, and (ii) performed in the top fifty percent of firms in the marketplace providing a similar kind of investment service]demonstrated organizational and staffing stability; managed growth of assets; a sound investment strategy and process; strong risk management; consistency of rolling, risk-adjusted, excess, net-of-fee returns relative to its assigned benchmark index; and fair and reasonable fees for services provided;[, as measured by generally recognized performance benchmarks contained in the Comptroller's guidelines applicable to the investment service provided];

[(9)] (7) upon the request of a trustee(s), an investment manager proposed for award under this provision shall be made available to respond to questions related to the proposed award; and

[(10)] (8) no contract procured pursuant to this provision may be executed without the approval of the Pension Fund(s), pursuant to a vote of its or their trustees, after a presentation by the Comptroller or his or her designee and submission of the Recommendation for Award [and proposed contract], which shall include such information as necessary to establish that the manager or submanager meets the criteria in this section and provides fair and reasonable fees.