INTRODUCTION

The underlying purposes of these Rules are to simplify, clarify and modernize the law governing procurement by the City of New York; to permit the continued development of procurement policies and practices; to make as consistent as possible the uniform application of these policies throughout New York City agencies; to provide for increased public confidence in New York City's public procurement procedures; to ensure the fair and equitable treatment of all persons who deal with the procurement system of the City of New York; to provide for increased efficiency, economy, and flexibility in City procurement activities and to maximize to the fullest extent the purchasing power of the City; to foster effective broad-based competition from all segments of the vendor community; including small businesses, minority and women-owned and operated enterprises; to safeguard the integrity of the procurement system and protect against corruption, waste, fraud, and abuse; to ensure appropriate public access to contracting information, and to foster equal employment opportunities in the policies and practices of contractors and subcontractors wishing to do business with the City.

This copy of the Rules, while not official is, to the best of our knowledge, complete and accurate at the time of its printing. For an electronic version of the Rules, proposed and final rule amendments since the publication date, please see the Procurement Policy Board's webpage on the New York City website at www.nyc.gov/ppb.

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CHAPTER 1 - GENERAL PROVISIONS

Section 1-01 USE OF LANGUAGE IN THESE RULES.

(a) Singular-Plural and Gender Rules. In these Rules, words in the singular number include the plural and those in the plural include the singular. Words of a particular gender include any gender and the neuter. When the sense so indicates, words of the neuter gender refer to any gender.

(b) Titles. The titles to chapters, sections, subdivisions, and paragraphs, or other titles contained in these Rules, are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of the substantive provision to which the title applies unless the context so requires.

(c) Listing(s) Not Indicative of Order of Preference. Unless otherwise stated, a listing of factors, criteria, or subjects in these Rules does not constitute an order of preference.

(d) Meanings. The words defined in this section shall have the meanings set forth below whenever they appear in these Rules unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular provision.

(e) Definitions:

Acceptable Brands List. An acceptable brands list is a list of manufacturer's name(s), brand name(s), or model and catalogue numbers, based on a written specification. It is arrived at by a systematic and formal process that includes public notice and certain tests or other criterion for comparing or examining and approving products for inclusion on the list.

Acceptance. i) Acknowledgment of an offer. ii) Acknowledgment that a delivery meets contract requirements.

ACCO. An acronym that stands for Agency Chief Contracting Officer. Position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate agency staff in conjunction with the CCPO.

Agency Contract File. Those file(s) that contain information pertaining to the solicitation, award, and administration of each contract.

Agency Head. A term referring to heads of city, county, borough, or other office, administration, department, division, bureau, board, or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.

Alternative Bid/Proposal. Response to a solicitation offering an alternative to the requirements of specifications set forth in the solicitation.

Alternative Procurement Method. Any method of procurement other than competitive sealed bid.

Appeal. A formal request to redress an administrative decision.

Best and Final Offers. The revised and corrected final proposals submitted by vendors after discussions and negotiations have been held by the procuring agency.

Bid. An offer, as a price, whether for payment or acceptance. A tender given specifically to a prospective purchaser upon request, usually in competition with other bidders.

Bidder. Any vendor submitting a competitive bid in response to a solicitation.

Bidders/Proposers List. A list maintained for the purposes of setting out the names and addresses of vendors from whom bids and proposals can be solicited.

Brand Name Only Specification. A specification that cites the brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

Brand Name or Equal Specification. A specification that cites brand name, model number, etc., as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

Business. Any corporation, firm, company, organization, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity including not-for-profit organizations.

Buy-Against. The process by which, as part of contract administration, an agency obtains goods and services to fulfill its requirements after a vendor defaults or fails to fulfill its contract responsibilities.

CCPO. An acronym that stands for City Chief Procurement Officer. Position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

CDRB. An acronym that stands for Contract Dispute Resolution Board.

Change Order. Any alteration, change, amendment, or modification to any contract or agreement approved as required by law or rule.

Charter. The New York City Charter.

City. City of New York.

City Retirement System or Retirement System. One of the defined benefit retirement plans that offers benefits defined by law for participating City employees. City Retirement System shall include pension related funds, such as the variable supplements funds, that provide non-pension benefits to City employees.

Client Services. Programs contracted for by the City of New York on behalf of third-party clients, including programs to provide social services, health or medical services, housing and shelter assistance services, legal services, employment assistance services, and vocational, educational, or recreational programs. Client services are sometimes referred to as "human services" and government agencies, whose primary missions involve the award and administration of such contracts, or provision of the same or similar services by agency employees, are sometimes referred to as "human services agencies." Examples of client services include, but are not limited to, day care, foster care, mental health treatment, operation of senior centers, home care, employment training, homeless assistance, preventive services, health maintenance organizations, youth services, and the like.

Competitive Sealed Bidding. The source selection method in which sealed bids are publicly solicited and opened and a contract is awarded to the lowest responsive, responsible bidder.

Competitive Sealed Proposals. The source selection method in which a solicitation is made to potential vendors, and between receipt of proposals and award, discussions with vendors may take place to resolve uncertainties in the proposal, advise vendors of deficiencies in meeting the agency's requirements, allow for resulting price changes, etc.

Completion Contracts. Contracts entered into by an agency with a vendor for completion of all or part of the work of a construction contract. Completion contracts shall not be considered new procurements.

Construction. The process of constructing, reconstructing, demolishing, excavating, renovating, altering, improving, rehabilitating, or repairing any building, facility, or physical structure of any kind, excluding the performance of routine maintenance.

Construction Management Contract. A form of construction contract that provides that the vendor is to furnish management and supervisory services necessary for the construction of facilities that may also include construction services and the ability to award the underlying construction contracts.

Construction-Related Services. Those services that may reasonably be required in the planning, design, or construction of real property or other public improvements. Such services shall include, but not be limited to, such services as architecture, engineering, construction supervision, construction management, planning, surveys and reports, testing and investigation, and printing and blueprinting.

Contract. A written agreement between the City and a vendor in an amount generally in excess of the small purchase limits that gives rise to obligations that are enforced and recognized by law.

Contracting Officer. Any person duly authorized to enter into and administer contracts and make determinations with respect thereto. The term also includes an authorized representative acting within limits of authority.

Contractor. Any person having a contract with a governmental body.

Conviction. A legal determination of guilt in any United States jurisdiction relative to a criminal offense that constitutes a felony or misdemeanor including a guilty plea or a plea of nolo contendere.

Cost Analysis. The process of examining the reasonableness of a vendor's price by evaluation of the separate cost elements and proposed profit in part on the basis of cost data supplied and certified by the vendor. Cost analysis is used on contract actions (including change orders) where price cannot be determined as fair and reasonable by using price analysis alone.

Day(s). Calendar day unless otherwise specifically stated in the applicable rule.

DCAS. An acronym that stands for Department of Citywide Administrative Services.

DDC. An acronym that stands for Department of Design and Construction.

Debarment. Exclusion for cause of a vendor from consideration for future business for a specified period of time as determined by OATH.

DEFO. An acronym that stands for Division of Economic and Financial Opportunity of the Department of Small Business Services.

Discussion. The process that enhances understanding of the City's requirements in conjunction with the vendor's proposals and capabilities to arrive at the best price prior to Best and Final Offers in a Competitive Sealed Proposal method of procurement.

DLS. An acronym that stands for Division of Labor Services of the Department of Small Business Services.

DOI. An acronym that stands for Department of Investigation.

DSBS. An acronym that stands for Department of Small Business Services.

Emergency. An unforeseen danger to life, safety, property, or a necessary service.

Equal Employment Opportunity/EEO. The treatment of all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status in all employment decisions, including but

not limited to recruitment, hiring, compensation, fringe benefits, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off, termination, and all other terms and conditions of employment as required by federal, state, and local laws and executive orders.

Executed. When referring to a contract, the point at which all requirements for effectiveness of the contract have been fulfilled, including all required signatures and approvals, prior to registration by the Comptroller.

FISA. An acronym that stands for Financial Information Services Agency.

FMS. An acronym that stands for Financial Management System.

FOIL. An acronym that stands for Freedom of Information Law.

Goods. All personal property, including but not limited to equipment, materials, printing, and insurance, excluding land or a permanent interest in land.

Governmental Body. Any department, office, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official for the executive or legislative branches of the government of the City of New York whose operations are paid for out of the City treasury or out of the monies under the control of assessed or collected by the City or the majority of the members of whose board are City officials or are individuals appointed directly or indirectly by City officials.

Grant. A cash transfer made by a government entity to another government entity, a quasi-public entity, a private organization, or an individual, for use by the recipient in accomplishing objectives established by the recipient. A grant is permissible only to accomplish a public purpose authorized by federal, state, or City law. A grant may be conditional, although awarded without other consideration. Federal and state grants are identified specifically by formula or specific allocations in law or in the annual operating budget act, bond authorizations, or other acts of Congress or the state legislature. Grants can be distinguished from procurement contracts, which call for the vendor to produce specific end products or to deliver specific goods or services. While there are requirements under a grant that result in an executed agreement between the grantor and grantee, this document is not a contract for services.

HHS (Health and Human Services) Accelerator. HHS Accelerator is an office that facilitates the central management of the procurement process for client services and contractual relationships with client services vendors by creating and maintaining a web-based document vault for client services vendors; by creating and maintaining a centralized, electronic and web-accessible categorization system of services provided for all City agencies; by prequalifying client services providers; and by managing procurements for client services.

HHS Accelerator Director. A position designated by the Mayor to head HHS Accelerator with regard to procurements conducted through HHS Accelerator.

Human Services/Client Services. Services contracted for by an agency on behalf of third party clients, including programs to provide social services such as:

(i) day care,

(ii) foster care,
(iii) home care,
(iv) homeless assistance,
(v) housing and shelter assistance,
(vi) preventive services,
(vii) youth services,
(viii) senior centers,
(ix) employment training and assistance,
(x) preventive services,
(xi) health or medical services including those provided by health maintenance organizations;
(xii) legal services,
(xiii) vocational and educational programs, and
(xiv) recreation programs.

IFB. An acronym that stands for Invitation for Bids. See Invitation for Bids.

Improper Conduct. Includes but is not limited to intentional or grossly negligent billing irregularities, submitting false or frivolous or exaggerated claims, the falsification of documents or records, the willful destruction of documents or records the vendor had an obligation to maintain, bribery, use of false deceptive statements to obtain some benefit, causing competition to be restrained or limited, misrepresentation, falsely claiming to be a minority or small business, violations of ethical standards established by the New York City Conflicts of Interest Board or the Procurement Policy Board, and other dishonesty incident to obtaining, prequalifying for, or performing any contract or modification thereof.

In Ink. A provision specifying the use of a pen to satisfy all signature and initialing requirements. Wherever these Rules provide that an action be taken "in ink," this requirement may be satisfied, if provided for in the solicitation, through the use of electronic signatures.

In Writing. Paper or electronic documents, as defined in the solicitation, unless otherwise stated.

Information Technology. Systems or components thereof including, but not limited to, hardware, software, firmware, and telecommunications that integrate and process data; and services including, but not limited to, planning, consulting, project managing, developing requirements definitions, analyzing, designing, programming, testing, training, implementing, as well as conversion capacity management and quality assurance for the purpose of using, creating, maintaining, operating, or repairing computer systems or networks or computer systems or components thereof.

Inspection. The process of checking material purchased against specifications to insure standards are met.

Inspector. The individual responsible for inspection in accordance with a prescribed inspection procedure.

Intergovernmental Purchase. The issuance of a purchase order or contract to procure

goods, services, or construction through the United States General Services Administration, any other federal agency, the New York State Office of General Services, any other state agency or in cooperation with another public agency subject to the rules set forth herein.

Investigative or Confidential Services. Services provided by law enforcement, scientific, and/or legal consultants, or other experts or professionals that are necessary in connection with an official matter within the scope of the acquiring agency's authority and that directly or indirectly relate to a pending or contemplated case, trial, litigation, or confidential or sensitive investigation or negotiation for which such services of the nature and kind envisioned herein are ordinarily used.

Investment Consultant. The investment consultant(s) engaged for the purpose of providing investment consulting services to a City Retirement System and selected by the Board of a City Retirement System to participate in an Investment Manager Search.

Investment Manager. A firm that makes investments in portfolios of publicly held securities on behalf of one or more City Retirement Systems.

Investment Manager Search. A method of source selection for investment management services for the City Retirement Systems under which candidates for consideration of potential award of a contract are identified through the review and screening of industry databases, in accordance with procedures specified in this chapter.

Invitation for Bids (IFB). All documents, whether attached or incorporated by reference, utilized in soliciting a bid. Usually used in connection with Competitive Sealed Bidding.

LBE. Locally Based Business Enterprise program established under New York City Local Law 49 for the year 1984 as amended by New York City Local Law 25 for the year 1989 which provides assistance to small, economically-disadvantaged construction firms meeting the stated economic criteria regardless of race or sex.

M/WBE. An acronym that stands for Minority and Women Owned Business Enterprise. A business enterprise authorized to do business in the State that has been certified by the program established pursuant to §1304 of the New York City Charter, including sole proprietorships, partnerships, and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens who are either minority group members or women, (ii) the ownership interest of such person is real, substantial, and continuing, and (iii) such persons have and exercise the authority to control independently the day-to-day business decisions of the enterprise.

May. Denotes the permissive.

Negotiation. The deliberation and discussion of the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or business transaction.

Negotiated Acquisition. A method of source selection under which procurements can be made through negotiation due to circumstances and subject to conditions, as specified in these Rules, in which it is not practicable and/or advantageous to the City to make the procurement

through competitive sealed bidding or competitive sealed proposals. The use of negotiated acquisition requires CCPO approval.

Non-Commodity Data Processing Equipment, Products, and Services. Includes, but is not limited to, mainframes, and related peripheral equipment such as disk storage, tape storage, and associated controllers, sophisticated switching equipment, integrated systems, operating software, major applications software, and all data processing consultant services, all of which require a high level of planning, expertise, and coordination of a technical and physical nature.

Non-Responsive Bid. A bid that does not conform to the requirements of the Invitation for Bids.

Notice of Award. Process of notifying successful vendors of an intended contract award.

OATH. An acronym that stands for Office of Administrative Trials and Hearings.

OMB. An acronym that stands for the Office of Management and Budget.

Offer. The act of one person that gives another person the legal power to create a contract to which both of them are parties.

Offeror. A person submitting an offer.

Officer. An individual holding a position of authority either in government or business.

Partner. One of two or more persons heading the same partnership.

Person. Any business, individual, partnership, corporation, union, firm, company, committee, club, other organization, governmental body, or group of individuals.

Phased Design and Construction. A method in which construction is begun when appropriate portions have been designed, but before substantial design of the entire structure has been completed.

PIN. An acronym that stands for Procurement Identification Number. A unique identifying number for each solicitation or contract notification, which must be consistently used by an agency each time any action related to the procurement is published, commencing with the first time a publication related to that procurement is advertised. The first three digits of the PIN shall be the agency budget code.

PPB. An acronym that stands for Procurement Policy Board.

PQL. An acronym that stands for prequalified list.

Prequalification. The screening of potential vendors in which a purchaser may consider factors such as financial capability, reputation, and management in order to develop a list of prospective vendors qualified to be sent invitations to bid or requests for proposals.

Prevailing Market Price. Prices commonly paid by the public either through a standard price list or catalogue.

Price Analysis. The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Examples of price analysis techniques that may be appropriate to use to determine whether a proposed price is fair and reasonable include, but are not limited to, comparing proposed prices received in response to a solicitation; comparing current proposed prices to prior proposed prices and contract prices; applying rough yardsticks, i.e., rough order of magnitude (e.g., dollars/lb., price/horsepower), to a proposed price to highlight inconsistencies that would warrant further review; comparing proposed prices with competitive price lists, published market prices of commodities, similar indexes, discounts or rebate arrangements, and comparing proposed prices with cost estimates prepared by City personnel charged with cost estimating.

Procurement. Buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction. It also includes all functions that pertain to the obtaining of any good, service, or construction, including planning, description of requirements, solicitation and selection of sources, preparation and award of contract, and all phases of contract administration, including receipt and acceptance, evaluation of performance, and final payment.

Professional Services. Services other than human/client services that require specialized skills and the exercise of judgment, including but not limited to:

(i) accountants,
(ii) lawyers,
(iii) doctors,
(iv) computer programmers and consultants,
(v) architectural and engineering services, and
(vi) construction management services.

Proposal. An offer made by one person to another as a basis for negotiations for entering into a contract.

Proposal Evaluation Criteria. Factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price, and other important considerations used to evaluate which vendor in a competitive negotiation has made the most advantageous offer.

Proposer. A person submitting a proposal in response to a Request for Proposal.

Protest. A complaint about a governmental action or decision concerning procurement brought by an interested party to the appropriate administrative section with the intention of achieving a remedial result.

Public Notice. Advertisement and announcement of contract actions with the intended purpose of increasing competition; broadening industry participation; assisting small, disadvantaged, and minority- or woman-owned businesses; and monitoring of City procurement activities.

Public Opening. The process of opening and reading bids, conducted at the time and place specified in the Invitation of Bids and/or the advertisement and in the presence of anyone who wishes to attend.

Purchase Description. The words used in a solicitation to describe the goods, services, or construction to be purchased, including any performance, physical, or technical requirements. Unless the context requires otherwise, the terms "purchase description," "purchase specification," and "specification" may be used interchangeably.

Purchase Order. An official document of the City directing the vendor to perform. A purchase order formalizes a purchase transaction with a vendor for purchases generally at or below the small purchase limits unless the purchase order is placed against an existing contract.

Registration. The process through which the Comptroller (1) encumbers funds to insure that monies are available to pay vendors upon the satisfactory completion of contract work; (2) maintains a registry of City contracts and agreements; (3) presents objections if, in the Comptroller's judgment, there is sufficient reason to believe that there is possible corruption in the letting of the contract or that the proposed contractor is involved in corrupt activity, and (4) tracks City expenditures and revenues associated with those contracts and agreements.

Responsible Bidder or Proposer. A vendor who has the capability in all respects to perform in full the contract requirements, and the business integrity and reliability that will assure good faith performance.

Responsive Bidder or Proposer. A vendor whose bid or proposal conforms to the terms set out by the City in the solicitation.

RFP. An acronym that stands for Request for Proposals. All documents, whether attached or incorporated by reference, used for soliciting competitive proposals.

Rule. As used herein, the statement or communication that prescribes mandatory standards for the procurement of goods, services, and construction.

Sealed Bid. A bid that has been submitted in response to an Invitation for Bids in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids. If so provided in the IFB, sealed bids may be submitted electronically, provided they are submitted in a manner that prevents the contents being revealed or known prior to the date and time set for opening of bids.

Service Contract. A contract that calls for a vendor's time and effort rather than for delivery of goods and construction. The term as defined here does not include employment agreements or collective bargaining agreements.

Services. The furnishing of labor, time, or effort by a vendor. This term shall not include employment agreements or collective bargaining agreements.

Shall. Denotes the imperative.

Shortlist of Investment Managers. The list of recommended Investment Managers that received multiple recommendations from the Investment Consultants.

Single Bid/Proposal. The only bid/proposal received in response to an Invitation for Bids/Request for Proposals.

Small Purchases. Any procurement at or below the small purchase limits.

Sole Source Procurement. An award of a contract for a good, service, or construction to the only source for the required good, service, or construction.

Solicitation. The process of notifying prospective vendors that a governmental body wishes to receive bids or proposals for furnishing goods, services, or construction. The process may consist of public advertising, mailing invitations for bids or requests for proposals, posting notices, telephone or facsimile messages to prospective vendors, or all of these.

Special Case. A situation in which it is either not practicable or not advantageous to the City to use competitive sealed bidding as defined in § 3-12 of the Charter.

Specification. A description of what the purchaser seeks to buy and, subsequently, what a vendor must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of a good, service, or construction. It may include a description of any requirements for inspecting, testing, or preparing a good, service, or construction item for delivery; also Purchase Description.

Standard Services. Services other than professional services and human/client services such as custodial services, security guard services, stenography services and office machine repair.

State. State of New York.

Suspension. An agency decision to exclude a vendor from consideration for award of contracts for a period not exceeding three months plus any extensions pending a debarment determination by OATH.

Time. Unless otherwise stated in these Rules, time shall be designated in calendar days.

Unsolicited Proposal. A written proposal submitted to an agency on the initiative of the proposer for the purpose of obtaining a contract with the City and which is not in response to a formal or informal request. Advertising material, commercial product offers, or technical correspondence are not considered unsolicited proposals.

User. An individual or entity for which goods, services, or construction are to be purchased.

VENDEX. A computerized citywide system providing comprehensive contract management information.

Vendor. An actual or potential contractor.

WBE. (See M/WBE).

Year. Unless otherwise indicated in these Rules, the word "year" as it relates to terms of contracts shall mean the City's fiscal year.

Section 1-02 APPLICABILITY OF PPB RULES.

(a) General Applicability. Except as otherwise provided by law, these Rules shall apply to the procurement of all goods, services, and construction to be paid for out of the City treasury or out of monies under the control of or assessed or collected by the City.

(b) Procurement by Independently Elected Officials. These Rules shall apply to the procurement of all goods, services, and construction by independently elected City officials and by the City Council. However, for such procurements, with the exception of Mayoral action required by Section 334(c) of the Charter (relating to the public availability of copies of contract and contractor information), where these Rules require action by or appeal to the Mayor or an appointee of the Mayor with regard to a particular procurement, such action or appeal shall instead be taken or received by the independently elected official or the official's designee, or, in the case of the City Council, by the Speaker or another member of the Council designated by the Speaker with the approval of the majority of the members of the Council.

(c) Procurement by Other Public Entities. These Rules shall apply to the procurement of all goods, services, and construction by entities the majority of whose members are City officials or are individuals appointed directly or indirectly by City officials, unless otherwise provided by law. However, for such procurements, with the exception of Mayoral action required by Section 334(c) of the Charter (relating to the public availability of copies of contract and contractor information), where these Rules require action by or appeal to the Mayor or an appointee of the Mayor, such action or appeal shall instead be taken or received by the governing board of such entity or by the chair of the board or chief executive officer of such entity pursuant to a resolution adopted by such board delegating such authority to such officer.

(d) Procurement Requirements Prescribed by Entities External to the City or other Applicable Law.

(1) These Rules shall not apply to procurements to the extent that a source of funds outside the City of New York, a federal or State statute or rule, the terms of a court order or consent decree, or other applicable law expressly authorizes or requires otherwise. All other provisions of these Rules shall apply to such procurements.

(2) The source selection requirements of these Rules shall not apply to procurements where a source of funds outside the City of New York, a federal or State statute or rule, the terms of a court order or consent decree, or other applicable law expressly authorizes or requires that a procurement be made from a specified source. All other provisions of these Rules shall apply to such procurement.

(e) Procurements Funded by Line Item Appropriations or Discretionary Funds. The source selection requirements of these Rules shall not apply to contract awards made from line item appropriations and/or discretionary funds to community-based not-for-profit organizations or other public service organizations identified by elected City officials other than the Mayor and the Comptroller. All other provisions of these Rules shall apply to such

procurements. In addition, for all such procurements, the appropriate elected official, his or her designee, or, in the case of a contract to be administered by a Mayoral agency, the ACCO of the agency administering the contract, shall certify that all procedural requisites established by the elected official or by the agency administering the contract have been met.

(f) Transactions Not Subject to These Rules. These Rules shall not apply to the following transactions, provided the ACCO determines that the process to be followed is in the best interest of the City and states the basis therefor:

(1) grants or contracts between City agencies and other governments or any public authority or public benefit corporation except as provided by the Government-To-Government Purchases rule;

(2) the provision of work or services by public utilities regulated by the New York State Public Service Commission (such as local telephone service, electric light and power, gas, water, and steam) for which the rates charged to customers have been tariffed in accordance with the provisions of the Public Service Law, or for which there are no practical competitive alternatives;

(3) the provision of cable television services or other public service regulated by the New York State Public Service Commission, or any interstate public utility regulated by either the Federal Energy Regulatory Commission or the Federal Communications Commission;

(4) memberships in professional associations, and

(5) subscriptions, including electronic subscriptions, for magazines and periodicals, orders for books and "off-the-shelf" training videotapes, and attendance at standard commercially-available training seminars.

(g) Severability. If any provision of these Rules or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of these Rules that can be given effect without the invalid provision or application, and to this end the provisions of these Rules are declared to be severable.

(h) Ratification of Minor Rules Violations.

(1) Prior to Registration. If, prior to registration, it is determined by the ACCO that a procurement is in violation of these Rules, and the violation has been deemed to have had no significant, adverse impact on the competitive process, then as soon as practicable after discovery, the ACCO shall either:

(i) revise the procurement to comply with these Rules, or

(ii) if the minor Rules violation(s) cannot be corrected to comply with these Rules, then upon written application by the ACCO, the CCPO may ratify the procurement provided it is in the best interest of the City to do

so, and provided such ratification will not violate any law applicable to the procurement process. Such ratification shall include the justification(s) therefor.

(2) After Registration. If, after registration, it is determined that a procurement is in violation of these Rules:

(i) if the selected vendor has not acted fraudulently or in bad faith:

(A) the minor Rules violation may be ratified and the procurement affirmed, provided it is determined by the ACCO and approved by the CCPO that doing so is in the best interests of the City; such determination and approval shall include the justification(s) therefor, or

(B) the procurement may be terminated by the ACCO and the selected vendor shall be compensated in accordance with applicable law or contract terms.

(ii) if the selected vendor has acted fraudulently or in bad faith:

(A) the procurement may be declared null and void by the ACCO who shall retain the option to exercise the City's rights to suspend or debar the vendor and to recover all payments made for such a procurement even when the City retains the goods, services, or construction provided by the vendor; in such event the vendor's name shall be entered as a caution in the VENDEX database, or

(B) the minor Rules violation may be ratified and the procurement affirmed, provided it is determined by the ACCO and approved by the CCPO that doing so is in the best interests of the City, including the reasons therefor. Such ratification shall not prejudice the City's rights to damages as may be appropriate.

(3) Public Notice. Notice of the ratification of a minor Rules violation shall be published at least once in the City Record within ten days after the CCPO's determination. Such notice shall include the name of the vendor (when applicable); the procurement identification number; a brief description of the goods, services, construction, or construction-related services procured; the dollar amount; and the duration of the contract.

(i) General Delegability of Authority. Unless otherwise provided by law, these Rules, Mayoral Executive Order, Comptroller Directive, or City policy or procedure, the Mayor, Comptroller, CCPO, Agency Head, or ACCO may delegate any authority vested in that official by these Rules in writing to other City officials or employees having the knowledge and experience necessary to exercise such authority in the City's interest. Copies of such delegations shall be filled with the CCPO.

Section 1-03 POLICY STATEMENTS.

(a) Ethics.

(1) Public employees responsible for the expenditure of taxpayer dollars have a responsibility to ensure that their conduct will not violate the public trust placed in them. They must make certain that their conduct does not raise suspicion or give the appearance that they are in violation of their public trust. To this end, public employees and elected officials having responsibility for contracting at all levels shall:

(i) encourage competition, prevent favoritism, and obtain the best value in the interest of the City and the taxpayers;

(ii) place professional responsibilities above personal interests;

(iii) ensure fair competitive access to City procurement opportunities to a broad cross-section of responsible vendors;

(iv) deal with the public and with vendors with courtesy, consideration, and even-handedness;

(v) use information gained confidentially in the performance of City duties solely in the City's interest; and

(vi) report corruption and unethical practices, wherever and whenever discovered, to the appropriate official, and/or take such other action as is warranted by the situation.

(2) In soliciting, awarding, or administering a procurement, under no circumstances may an agency or an official take into consideration the fact that a vendor or associated individual(s) has or has not made or promised to make a campaign contribution.

(3) Vendors and their representatives have a responsibility to deal ethically with the City and its employees, and to respect the ethical duties of City employees. Information provided by vendors to the City must be complete and accurate. Vendors must at all times avoid conduct that is in restraint of competition. Vendors must not request City employees to engage in conduct that would violate the law, these Rules, or the principles set forth in this section.

(4) When there is doubt as to whether conduct is prohibited by Chapter 68 of the New York City Charter governing conflicts of interest, employees shall seek guidance from the Conflicts of Interest Board.

(b) Economic and Financial Opportunity. It is the policy of the City of New York to foster the economic empowerment of minorities and women, and to cultivate the development of minority- and women-owned business enterprises, as well as small and locally-based businesses. Through the rules and programs implemented by DSBS, the City will enhance the ability of these businesses to compete for City contracts, will enhance City agencies' awareness of such businesses, and will ensure the meaningful participation of these firms in the City contracting process.

(c) Equal Employment Opportunity. It is the policy of the City of New York to promote equal employment opportunity for women and minority group members by City contractors and subcontractors and to ensure that all persons employed by or seeking employment with such contractors and subcontractors are protected from unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status (and from any other unlawful discrimination pursuant to federal, state, local laws and executive orders) with regard to all employment decisions, including recruitment, hiring, compensation, fringe benefits, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off, termination, and all other terms and conditions of employment. Through the rules and programs implemented by DSBS, the City will enhance the employment opportunities of minorities and women within the businesses that sell goods, services, and construction to the City.

Section 1-04 CONTRACT INFORMATION.

(a) Agency Contract Files. The Mayor shall ensure that copies of City contracts and other standard information regarding City contracts and vendors (including information relating to the vendor's qualification and performance evaluations, contract audits, and decisions regarding suspension and debarment) are reasonably available for public inspection as provided by law, with adequate protection for confidential information. Each agency shall maintain files that contain all documentation pertaining to the solicitation, award, and management of each of its contracts, purchase orders, amendments, renewals and change orders including, but not limited to, a written copy of each report, record, justification, approval, determination, or filing that is required to be made by law or these Rules.

(b) Electronic Documents and Signatures. To the extent permissible under applicable law and these Rules, agencies may store the contents of agency contract files electronically, and may use and may allow vendors to use, electronic documents and signatures in the course of procurements. Any system used for storage of procurement-related documents in electronic form must be such as to provide for the security and integrity of the documents contained in it to an equal or greater degree than a traditional hard copy filing system.

(c) Retention of Contract Files. All contract files shall be retained within the City for a minimum of seven years beyond the expiration date of the contract by each agency before final disposition pursuant to procedures of the Department of Records and Information Services.

(d) Requests by Elected Officials for Contract Documentation. Whenever an elected official of the City requests documentation relating to the solicitation or award of any City

contract, the Mayor and the agency shall promptly provide such documentation, with adequate protection to ensure that the confidentiality of information whose confidentiality is protected by agreement or law shall not be further disclosed, or shall promptly respond to the requesting official with reason why such documentation cannot be provided. If the Mayor or agency is unable to provide the requested documentation within ten business days of the date the request is received, the Mayor or agency shall within such time deliver to the requesting official a statement of the reasons the documentation cannot be promptly provided and shall include in such statement a timetable within which the documentation will be provided, not to exceed thirty days from the date of the original request.

(e) Central Contract Registry. Information on contracts and vendors, maintained in databases established pursuant to the Administrative Code of the City of New York (the FMS and VENDEX databases), shall be made available, on-line, in read-only format, in accordance with Section 1064 of the Charter and these Rules, to both government officers and employees and members of the public. Requests for contract information not contained in these databases, other than requests made pursuant to these Rules, shall be made to the ACCO pursuant to Article 6 of the Public Officers Law (the Freedom of Information Law). All information contained in the FMS and VENDEX databases is subject to subdivision 2 of Section 87 of the Public Officers Law.

CHAPTER 2 - PROCUREMENT PROCESS

Section 2-01 DECISION TO PROCURE TECHNICAL, CONSULTANT, OR PERSONAL SERVICES.

The decision to procure technical, consultant, or personal services that will cost in excess of $100,000 shall be made in writing by the ACCO in accordance with this rule.

Factors to be considered in making such decision shall include whether using procurement is:

(a) desirable to develop, maintain, or strengthen the relationships between non-profit and charitable organizations and the communities where services are to be provided;

(b) cost-effective; or

(c) necessary to:

(1) obtain special expertise,

(2) obtain personnel or expertise not available in the agency,

(3) provide a service not needed on a long-term basis,

(4) accomplish work within a limited amount of time, or

(5) avoid a conflict of interest.

Section 2-02 PRESOLICITATION REVIEW.

(a) Definition. A presolicitation review is the process by which an agency, after determining the necessity of the procurement and the need to contract out, defines the existing market for the goods, services, or construction required, estimates the expected cost, and determines the most appropriate method of procurement.

(b) Policy. Agencies shall perform a presolicitation review for:

(1) sole source procurements exceeding $10,000 for goods and services and $15,000 for construction and construction-related services, and

(2) all other procurements exceeding the small purchase limits, except emergency procurements.

(c) Categorical Review. The ACCO may determine that a single presolicitation review be conducted for a particular category of contracts. Such determinations shall be reevaluated at least every two years.

(d) Report. The presolicitation review shall be incorporated within a report that shall be approved by the ACCO and shall include:

(1) a description of the goods, services, or construction to be procured;

(2) a statement of need for the procurement in light of the agency's programmatic responsibilities;

(3) a statement of the date or time period required for delivery or completion, and an estimate of the length of time the proposed contract will remain in effect, including any renewals or extensions being considered;

(4) a statement of the basis for the decision to contract out for services (if applicable);

(5) a statement addressing the anticipated level of competition, based on agency staff knowledge of the market, and any surveys performed, as appropriate;

(6) an estimate of the cost of the proposed contract, and a certification that sufficient funds are available or anticipated to be available when the contract is executed;

(7) a statement of the method of source selection planned, together with all determinations and findings required pursuant to the rules governing that method of source selection; and

(8) if life cycle costing, value analysis, or other technique is used, the result of such analysis.

Section 2-03 COST REIMBURSEMENT CONTRACTS.

A cost reimbursement contract shall be used only when the ACCO determines that it will be less costly to the City than any other type or that it is otherwise in the best interests of the City to obtain the required goods, services, or construction by using such a contract, and that the proposed vendor's accounting system is adequate to allocate costs in accordance with generally accepted government accounting principles and will permit timely development of all necessary cost data in the format required. In addition, whenever a cost-plus-percentage-of-cost contract is used, it shall specify the maximum allowable expenditure.

Section 2-04 MULTI-TERM CONTRACTS (CLIENT SERVICES).

(a) **Definitions**. A multi-term contract is a contract for a period of longer than one year.

(b) **Policy**. Multi-term contracts may be used for client services contracts where:

(1) it is in the City's best interest to obtain continuity of service extending over more than one year,

(2) performance of such services involves high start-up costs, or

(3) changeover of contractors involves high phase-in/phase-out costs over a transition period.

(c) **Planning**.

(1) Annually, the ACCO of each agency awarding client services contracts shall review its entire portfolio of such contracts (including all existing contracts and anticipated new contracts that may occur over the course of the planning period, i.e., the period commencing with the second quarter of the current fiscal year, running through the end of the first quarter of the following fiscal year) and shall produce, in draft and final, a plan and schedule ("Plan") detailing the procurement actions anticipated with respect to each contract set to expire and/or planned for continuation during the upcoming fiscal year.

(2) The form of the draft and final Plans shall be prescribed by the CCPO, in consultation with the HHS Accelerator Director. The draft and final Plans shall include, but not be limited to: the type of services to be provided, the authorized maximum amount of funding associated with the program, the authorized number of contracts to be let for a particular program, and the month and year of the next planned competitive solicitation.

(3) The agency shall issue the draft Plan within 30 days following the submission of the executive budget. The agency shall hold a public hearing on the draft plan within 20 days of its issuance. Notice of such public hearing shall be published once in the City record not less than 15 days prior to the hearing date. Such notice shall include:

(i) agency name;

(ii) a brief description of the portfolio of contracts covered by the draft Plan;

(iii) how interested parties may obtain a copy of the draft Plan; and

(iv) date, time, and place of public hearing;

(4) The agency may include in its notice of public hearing a provision that if the agency does not receive, within 10 business days after publication of such notice or shorter period approved by the CCPO, from any individual a written request to speak at such hearing, then the agency need not conduct such hearing. Should the agency choose not to conduct such hearing, the agency shall publish a notice in the City Record canceling such hearing.

(5) Following the public hearing, the agency shall prepare a final Plan. The final Plan shall be submitted to the agency's ACCO for approval.

(6) The agency shall submit to the CCPO and the HHS Accelerator Director by August 31 a copy of the Plan approved by the ACCO.

(7) The approved final Plan shall be issued no later than September 30 of the year in question.

(8) Copies of the Plan submitted by the ACCO shall be made available for public review by the CCPO, no later than October 1.

(d) Determination and Approvals. Prior to issuing a solicitation for a multi-term contract, the ACCO, with approval of the HHS Accelerator Director for those procurements procured pursuant to Section 3-16 of the Rules, shall make a determination that:

(1) it is anticipated that the needs of the client population will continue beyond one year, and

(2) a multi-term contract will serve the best interests of the City by encouraging effective competition and promoting economies. Relevant factors include:

(i) service providers otherwise unwilling or unable to compete because of high start-up costs or capital investment in securing, expanding, or maintaining a service facility will be encouraged to participate in the competition if they may recoup such costs, as appropriate, during the longer period of contract performance;

(ii) lower operating costs will result because long-term service requirements and performance can be expected to result in lower prices;

(iii) economy and consistent quality of service may be promoted by encouraging stability of the provider's work force over a longer period of time; and/or

(iv) availability of appropriate and/or affordable facilities is severely limited.

(e) Permitted Length of Contract Terms. Client service contracts should be awarded for a term that is appropriate for the services to be performed, taking into consideration the nature of the services themselves, as well as other factors relevant to the provision of the services. The ACCO shall make a determination as to the basis for the term of a client services contract. All client service contracts may be awarded for at least an initial term, or a total term including all renewals, of up to three years. The term for a client services contract should otherwise be guided, in general, by the provisions set forth below.

(1) Six-year contracts. Examples of contracts for which a total term, including renewals, of up to six years would be appropriate include:

(i) contracts in programs in which there is a requirement for the vendor to establish linkages with other vendors in the locality, in order to provide effective service to the clients;

(ii) contracts in programs where the population to be served is fragile and/or difficult to serve and the well-being of the clients would be jeopardized by potentially frequent change in the vendor;

(iii) contracts in programs where the development and continuity of a personal, supportive, or therapeutic relationship between the caregiver and the affected client(s) is an integral requirement of the support service or treatment being provided, and the support service or treatment would be impaired by the severance of that relationship as a result of change of vendors; and

(iv) other contracts where the ACCO has set forth with particularity the reasons that it is not practicable or advantageous to competitively resolicit proposals as often as every three years.

(2) Nine-year contracts. Examples of contracts for which a total term, including renewals, of up to nine years would be appropriate include:

(i) contracts in programs where the treatment modality includes a long- term therapeutic relationship between the client and the caregiver as an integral part of the treatment program, and the treatment or service would be jeopardized by the severance of that relationship as a result of change of vendors;

(ii) contracts in residential care programs;

(iii) contracts in programs where services are provided in a center-based facility where obtaining necessary permits and approvals and/or other control of the site as a result of zoning land use issues or leasing is unusually complex or difficult;

(iv) contracts in programs where the procurement includes a significant

investment by the contractor for capital improvements; and

(v) other contracts where the ACCO has set forth with particularity the reasons that it is not practicable or advantageous to competitively resolicit proposals as often as every six years.

(3) In an extraordinary case for compelling reasons, such as the need to finance a program through the issuance of long-term bonds or the need to obtain financing associated with securing a site that can only be obtained from a long term lease, a contract may be awarded for a term in excess of nine years and shall be coterminous with the financing provisions. For such an award, the determination of the CCPO that such a longer term is necessary shall be required.

Section 2-05 SPECIFICATIONS.

(a) Policy. Specifications are used to obtain goods, services, and construction to fulfill the City's needs in a cost-effective manner, taking into account, to the extent practicable, the costs of ownership and operation, as well as costs of acquisition. Therefore, specifications shall:

(1) permit maximum practicable competition;

(2) describe clearly the City's requirements without favoritism toward a vendor or a vendor's good, service, or construction;

(3) to the extent practicable, be generic in nature and emphasize functional or performance criteria, while limiting design or other detailed physical descriptions to those necessary to meet the City's needs; and

(4) to the extent practicable, utilize accepted commercial standards, and limit unique requirements that would tend to favor a vendor or a vendor's good, service, or construction.

(b) Authority to Contract for Drafting of Specifications. The drafting of specifications may be performed by a vendor only upon a determination by the ACCO that it is in the best interest of the City to do so. Any vendor participating in the drafting of specifications shall not participate, in any manner, in a response to any subsequent solicitation utilizing such specifications, in whole or in part, unless, after reviewing the specifications, the ACCO determines, with CCPO approval, that the specifications do not favor a vendor or such vendor's good, service, or construction, and it is in the City's best interest to allow such participation and the basis thereof. Such prohibited participation shall include, but not be limited to, participating as a contractor or a subcontractor, or as a consultant to any contractor or subcontractor, responding to the solicitation using the specifications. The provisions of this subdivision shall apply to any vendor that has drafted any portion of the specifications used in a procurement, regardless of whether such vendor's services were procured specifically for the drafting of those specifications, were procured as general consulting services, or were donated.

(c) Brand Name Specifications.

(1) Policy. When a brand name only specification is used, the ACCO shall document the reasons for its use. When brand name or equal specifications are used, one or more brand name(s) and the salient characteristics of the brand name(s) shall be set forth in the solicitation.

(2) Acceptable Brands Lists. DCAS is solely responsible for the promulgation, modification, or revocation of acceptable brands lists, and has final authority for accepting for inclusion any brand on such lists. All agencies must rely, where practicable, on a DCAS acceptable brands list in specifying goods to meet their continuing requirements. Acceptable brands lists shall be reviewed at least every two years and vendors may apply for inclusion at any time. DCAS shall approve or deny a vendor's application within a reasonable period of time.

(3) Public Notice. Notice of the intention to establish an acceptable brands list, together with an invitation to apply for inclusion on that list, shall be continuously published by DCAS in the City Record. In addition, a list of all goods for which an acceptable brands list has been established, together with an invitation to apply for inclusion on that list, shall be continuously published by DCAS in the City Record. Both advertisements shall describe how and when products may be offered for consideration.

Section 2-06 PRICE/COST ANALYSIS.

Prior to vendor selection, the ACCO shall determine that the contract price is fair and reasonable by using price analysis and, where appropriate, cost analysis, as these terms are defined in these Rules, to make this determination.

Section 2-07 RESPONSIVENESS OF BIDS/PROPOSALS.

(a) Policy. A responsive bid or proposal is one that complies with all material terms and conditions of the solicitation and all material requirements of the specifications. The ACCO shall make a determination of responsiveness prior to award.

(b) Determination of Non-Responsiveness. If the lowest price bid or any proposal is found non-responsive, a determination, setting forth in detail and with specificity the reasons for such finding, shall be made by the ACCO. A copy of such determination shall be mailed to the non-responsive vendor no later than two business days after the determination is made, and the agency shall inform the vendor of the right to appeal as set forth herein. Such notice shall also inform the vendor that, if an appeal is taken, award of the contract shall be stayed pending the determination of the Agency Head, unless the ACCO makes a determination and informs the vendor, pursuant to subdivision (e) of this Rule, that the award will not be stayed because proceeding with the award without delay is necessary to protect substantial City interests.

(c) **Standards**. Factors affecting the responsiveness of bids or proposals include:

(1) compliance with all material requirements of the specification;

(2) compliance with all material terms and conditions of the solicitation;

(3) submission of bids or proposals in the form specified in the solicitation including all required signatures, in ink, and including all required pricing information;

(4) if bid or proposal price has been materially altered, alterations must be initialed in ink by the bidder or proposer. If the alteration has not been initialed in ink, and can be severed from the other items in the bid or proposal, then that particular item only may be considered non-responsive;

(5) submission of bids or proposals by the time and date and at the place specified in the solicitation except that a late proposal may be accepted pursuant to these Rules;

(6) submission of bid, performance, or payment security, if required by the solicitation. Acceptable security for bids, performance, and payment shall be limited to:

(i) a one-time bond in a form satisfactory to the City,

(ii) a bank certified check or money order,

(iii) City bonds, or

(iv) other financial instruments as determined by the Office of Construction in consultation with the Comptroller;

(7) submission of samples, literature, or other information, if required by the solicitation;

(8) submission of all required disclosure statements; and

(9) attendance at a mandatory pre-bid or pre-proposal conference or site inspection.

(d) **Rejection of Bids or Proposals**. Bids or proposals that fail to conform with the standards set forth above shall be rejected unless the ACCO determines in writing that waiving the nonconformance would not deprive the agency of the assurance that the contract will be performed according to its specified requirements and would not adversely affect the competition by placing a bidder in a position of advantage over other bidders or by otherwise undermining the competition.

(e) **Appeal**. All non-responsive determinations may be appealed as set forth herein.

(1) Time Limit. A vendor shall have five days from receipt of the determination of non-responsiveness to file an appeal with the Agency Head. Receipt of notice by the vendor shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Agency Head. The vendors shall also send a copy of its appeal, for informational purposes, to Office of the New York City Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, NY 10007.

(2) Form and Content. The appeal shall be in writing and shall briefly state all the facts or other basis upon which the vendor contests the finding of non-responsiveness. Supporting documentation, if any, shall be included.

(3) Stay of Award of Contract Pending Agency Head Determination. Award of the contract shall be stayed pending the determination of the Agency Head, unless the ACCO makes a determination that proceeding with the award without delay is necessary to protect substantial City interests. Where such a determination is made, the vendor shall be advised of this action in the determination of non-responsiveness or, if the stay is removed at any time after the vendor has been notified of determination of non-responsiveness, notification shall be provided to the vendor no later than two business days after such determination is made. The Agency Head shall consider the appeal, and may, in his or her sole discretion, meet with the vendor to discuss the merits of the appeal. The Agency Head shall make a prompt determination with respect to the merits of the appeal, a copy of which shall be sent to the vendor. The Agency Head's determination shall be final. The Agency Head shall not delegate the authority to make a determination on the appeal to the ACCO.

Section 2-08 VENDOR RESPONSIBILITY AND APPEAL OF DETERMINATION OF NON-RESPONSIBILITY.

(a) Policy.

(1) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

(2) The award of a contract to a contractor based on lowest evaluated price alone can be false economy if there is subsequent default, improper or exaggerated claims, late deliveries, or other unsatisfactory performance resulting in additional contractual and administrative costs. While it is important that City purchases be made at the lowest price, this does not require an award to a contractor solely because that contractor submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when

necessary, the responsibility of its proposed subcontractors.

(b) General Standards.

(1) A responsible contractor is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars.

(2) Factors affecting a contractor's responsibility may include:

(i) financial resources;

(ii) technical qualifications;

(iii) experience;

(iv) organization, material, equipment, facilities, and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments;

(v) a satisfactory record of performance;

(vi) a satisfactory record of business integrity;

(vii) where the contract includes provisions for reimbursement of contractor costs, the existence of accounting and auditing procedures adequate to control property, funds, or other assets, accurately delineate costs, and attribute them to their causes; and

(viii) compliance with requirements for the utilization of small, minority-owned, and women-owned businesses as subcontractors.

(3) Failure of a firm to provide relevant information specifically requested by the Contracting Officer may be grounds for a determination of non-responsibility.

(c) Special Standards.

(1) When it is necessary for a particular contract or class of contracts, the Contracting Officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that certain minimum experience or specialized facilities are needed for adequate contract performance.

(2) The special standards shall be set forth in the solicitation (and so identified) and shall apply to all bidders/proposers.

(3) Special standards must be based on demonstrated need and must not be used to artificially limit competition.

(d) Ability To Meet Standards.

(1) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(i) evidence that such contractor possesses such necessary items;

(ii) acceptable plans to subcontract for such necessary items; and

(iii) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(2) A prospective contractor that has performed unsatisfactorily shall be presumed to be non-responsible, unless the Contracting Officer determines that the circumstances were beyond the contractor's control or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of non-responsibility.

(e) VENDEX Questionnaire.

(1) Definitions. For purposes of this section only, the following definitions apply:

Affiliate. An entity in which the parent of the contractor owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the contractor also owns more than fifty percent of the voting stock.

Contract. Any agreement between an agency, elected official, or the Council and a contractor, or any agreement between such a contractor and a subcontractor which:

(i) is for the provision of goods, services, or construction and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at $100,000 or more, or

(ii) is for the provision of goods, services, construction, or construction-related services, is awarded to a sole source, and is valued at $10,000 or more.

Contractor. All individuals, sole proprietorships, partnerships, joint ventures, or corporations who enter into a contract, as defined herein, with an agency, an

elected official, or the Council.

Officer. Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known.

Parent. An individual, partnership, joint venture, or corporation which owns more than fifty percent of the voting stock of a contractor.

Principal Owner. An individual, partnership, joint venture, or corporation which holds a ten percent or greater ownership interest in a contractor or subcontractor.

Subcontract. Any contract, as defined herein, between a subcontractor and a contractor.

Subcontractor. An individual, sole proprietorship, partnership, joint venture, or corporation which is engaged by a contractor pursuant to a contract, as defined herein.

(2) Obligation to File Questionnaires. VENDEX questionnaires shall be completed and filed by the contractor at least once within each three year period within which such contractor does business with the City. Each contractor shall certify at the time of award of each contract that all the information submitted within such three year period is current, accurate and complete. In the event that 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 within three years, then such questionnaires shall be completed and filed:

(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 Rule 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 $100,000, and

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

(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 $100,000.

(3) Late Filing of Information: When Permitted. The VENDEX 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 Section 3-06 of these Rules;

(ii) accelerated purchases as defined by Section 3-07 of these Rules;

(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 Section 4-07 of these Rules where the contractor has not previously submitted a VENDEX 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 be submitted.

(4) Late Filing of Information: Required Findings. In the circumstances set forth in paragraph (3) of this subdivision, the VENDEX 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 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 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. 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 the requirement to supply that portion of the required information, 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 on behalf of the contractor;

(iii) the information to be covered by the exemption;

(iv) the compelling reasons why an exemption 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.

(6) Exemption: 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 is in the best interests of the City that the contract be awarded, the CCPO may exempt the contractor from the requirement for some specifically identified portion of information required by local law concerning the creation and maintenance of a computerized data base 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;

(iv) the reasons why an exemption 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 information.

(7) Reporting Requirement for Late Filings 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) of this section, or granting an exemption pursuant to subdivision (e)(5) and (6) of this section shall be filed by the CCPO with the Comptroller within five days after it is made or approved by the CCPO.

(8) 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:

(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 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 $100,000.

(9) 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. 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) 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) The questionnaire responses shall be entered into the citywide computerized VENDEX database no later than the completion of the Recommendation for Award.

(f) Department of Investigation and Administrative Fee.

(1) Prior to making its determination of vendor responsibility, the agency shall request the Department of Investigation to conduct a Vendor Name Check on the proposed vendor, which shall consist of a review of the names on the Questionnaire and other information to ascertain whether the business or its affiliated individuals are or have, during a relevant period of time, been the subject of an investigation by the Department. The Department of Investigation shall undertake the review expeditiously and provide an explanation to an agency if its review is not completed within thirty calendar days of the request. If the Department of Investigation ascertains that there has been such an investigation, it shall provide a copy of any final report or statement of findings to the Agency Head for use in making the determination of responsibility. If the results of the review are not made available to the agency within thirty calendar days of the request, the agency may make its responsibility determination on the basis of the information then available to it.

(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 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 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.

(g) Making the Responsibility Determination.

(1) The Contracting Officer shall use the following sources of information to support determinations of responsibility or non-responsibility:

(i) the VENDEX database of debarred, suspended, and ineligible contractors;

(ii) VENDEX and other records of evaluations of performance, as well as verifiable knowledge of contracting and audit personnel;

(iii) determinations of violations of employment-related federal, state, or local law or executive order, including but not limited to those relating to equal employment opportunity, prevailing wage, workplace health and safety, employee benefits, and employee wages and hours;

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

(v) pre-award survey reports; and

(vi) other sources such as publications, suppliers, subcontractors and customers of the prospective contractor, financial institutions, other government agencies, and business and trade associations.

(2) A Contracting Officer may notify the bidder or offeror of unfavorable responsibility information and provide the bidder or offeror an opportunity to submit additional information or explain its actions before adverse action is taken by the City.

(h) Determination of Non-Responsibility Required.

(1) If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a determination of non-responsibility setting forth in detail and with specificity the reasons for the finding of non-responsibility shall be prepared by the Contracting Officer.

(2) A copy of the determination of non-responsibility shall be immediately sent to the non-responsible bidder or offeror. Notice to the non-responsible bidder must be mailed no later than two business days after the determination of non-responsibility is made and must inform the contractor of the right to appeal

the determination to the Agency Head or designee within ten calendar days of receipt. A copy of the determination of non-responsibility shall also be sent to the CCPO and Comptroller.

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

(i) Determination of Non-Responsibility. An agency letting a contract by competitive sealed bid or competitive sealed bid from prequalified vendors may find the lowest responsive bidder(s) to be non-responsible in accordance with Section 2-08 of these Rules.

(j) Notice. After making a determination of non-responsibility, the ACCO shall notify the lowest bidder in writing of that determination. The notification shall state the reasons upon which the determination is based and shall inform the bidder of the right to appeal the determination of non-responsibility to the Agency Head and subsequently to the Mayor, and of the procedure for taking such appeals. The notification shall also contain the following statement:

> The vendor shall also send a copy of its appeal to the New York City Comptroller, for informational purposes, at Office of the New York City Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, NY 10007, (212) 669-2323.

(k) Appeal to Agency Head. Appeals to the Agency Head of the determination of non-responsibility shall be made pursuant to the following procedure:

(1) Time for Appeal. Any vendor who is determined to be non-responsible in connection with the award of a particular contract shall be allowed ten days from receipt of the agency's notification to file a written appeal of that determination with the Agency Head. Receipt of notice by the vendor shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Agency Head.

(2) Form and Content of Appeal by Vendor. The appeal by the vendor shall be in writing and shall briefly state all the facts or other basis upon which the bidder contests the agency finding of non-responsibility. Supporting documentation shall be included.

(3) Agency Head Determination. The Agency Head shall consider the vendor's appeal, and shall make a prompt written decision no later than sixty days after receipt with respect to the merits of the bidder's appeal, except when such appeal relates to an Office of Labor Services determination of non-compliance with applicable equal employment opportunity requirements. Under such exception, the Office of Labor Services shall review all appeals and shall inform the Agency Head of its recommendation as to the merits of the vendor's appeal within forty-five days. The Agency Head or head of the Office of Labor Services may, in his or her sole discretion, meet with the vendor to discuss his/her appeal.

If the Agency Head's determination is not made within the prescribed sixty days after receipt of the appeal, then the vendor may present the appeal to the Mayor.

(4) Notification to Vendor of Agency Head Decision. A copy of the decision of the Agency Head shall be sent to the vendor. If the Agency Head upholds the ACCO's finding of non-responsibility, the Agency Head shall inform the vendor of the right to appeal the decision to the Mayor, and of the procedure for taking such an appeal.

(5) Delegation. The Agency Head may designate a senior agency official, other than the ACCO or his or her subordinates, to consider this appeal.

(6) Finality. The Agency Head's decision of a vendor's appeal shall be final unless further appealed to the Mayor.

(l) Stay of Award of Contract Pending Agency Head Decision. Award of the contract shall be stayed pending the rendering of a decision by the Agency Head unless the ACCO makes a determination that execution of the contract without delay is necessary to protect substantial City interests. Where the award is not stayed, the vendor shall be advised of this action in the determination of non-responsibility or if the stay is removed at a later date, notification shall be provided to the vendor no later than two business days after such determination is made.

(m) Appeal to Mayor. Appeals to the Mayor of the Agency Head decision upholding a determination of non-responsibility shall be made pursuant to the following procedure:

(1) Delegation. The Mayor may delegate responsibility for deciding this appeal to the CCPO.

(2) Time for Appeal. Any vendor who wishes to appeal the decision of the Agency Head shall be allowed ten calendar days from receipt of the Agency Head's notification to file a written appeal of that determination with the Mayor or CCPO. Receipt of notification by the vendor shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the Office of the Mayor.

(3) Form and Content of Appeal by Vendor. The appeal by the bidder shall be in writing and shall briefly state all the facts or other basis upon which the bidder contests the agency finding of non responsibility. Supporting documentation shall be included.

(4) Mayoral Determination. The Mayor or CCPO shall consider the vendor's appeal, and shall make a prompt written decision with respect to the merits of the vendor's appeal. The Mayor, in the Mayor's sole discretion, may meet with the bidder to discuss the appeal.

(5) Notification to Bidder of Mayoral Decision. A copy of the decision of the Mayor or CCPO shall be sent to the vendor.

(6) Finality. The decision by the Mayor or CCPO of a vendor's appeal from an Agency Head decision concerning non-responsibility shall be final.

(n) Stay of Award of Contract Pending Decision By Mayor or His Designee. Award of the contract shall be stayed pending the rendering of a decision by the Mayor or CCPO, unless the ACCO has made a determination pursuant to these Rules that the execution of the contract without delay is necessary, or the Mayor or CCPO, in their discretion, determine that it is in the best interests of the City to go forward with the award of the contract.

(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 database.

(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 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 database, but a summary of such declaration or of any decision denying such an application shall be entered into the VENDEX 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.

(1) Time for Filing. No application for a declaration of rehabilitation may be filed prior to the latest date for filing of an appeal of a non-responsibility determination in accordance with subdivision (k)(1) of this section. If a vendor pursues an appeal in accordance with subdivision (k)(1) of this section, no application for a declaration of rehabilitation may be filed prior to the latest date for filing of an appeal to the Mayor in accordance with subdivision (m)(2) of this section. The submission of an application for a declaration of rehabilitation shall not toll the time limits set forth in this section for filing an appeal.

(2) Form and Content of Filing. To apply for a declaration of rehabilitation, a vendor must submit a written application to the CCPO. The rehabilitation application shall be certified by the applicant to the effect that all of the information supplied is true to the best of the applicant's knowledge, information and belief. The application shall state how the applicant has demonstrated its responsibility for future procurement awards, and shall:

(i) demonstrate that the issues leading to the relevant non-

responsibility determination(s) or to the relevant caution(s) have been remedied by the applicant, and

(ii) set forth any additional remedies or corrective actions the applicant is willing to undertake as a condition of a final declaration of rehabilitation by the CCPO.

(3) Remedies. Remedies or corrective actions may include, but are not limited to:

(i) retaining an auditor, monitor, technical consultant or independent private sector inspector general with the consent of the Department of Investigation to review the applicant's business practices, oversee its performance and/or develop specific remedies with respect to the subject matter of the non-responsibility determination(s) or caution(s);

(ii) ownership changes and/or reorganizations of the legal structure of the applicant in a manner that appropriately remedies the issues raised in the non-responsibility determination(s) or caution(s);

(iii) dismissing employees whose actions were the subject matter of the non-responsibility determination(s) or caution(s);

(iv) entering into certification agreements with the Department of Investigation prescribing corrective actions and/or otherwise appropriately remedying the subject matter of the non-responsibility determination(s) or caution(s);

(v) resolving judicial or administrative proceedings that were the subject matter of the non-responsibility determination(s) or caution(s) under terms demonstrating that such concerns have been appropriately remedied; or

(vi) engaging in any other lawful action leading to resolution of the issues that were the subject matter of the non-responsibility determination(s) or caution(s), or demonstrating that any negative responsibility information recorded as a caution has been appropriately remedied.

(4) Notice to Agencies. The applicant shall 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 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 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 database.

(7) Effect. Nothing in this subdivision shall preclude an agency Contracting Officer from finding a vendor to be responsible where such vendor has not applied for a declaration of rehabilitation or where an application for such declaration has been denied. Furthermore, nothing in this subdivision shall preclude an agency Contracting Officer from finding a vendor to be non-responsible, notwithstanding a declaration of rehabilitation.

Section 2-09 RECOMMENDATION FOR AWARD.

(a) Policy. The Contracting Officer shall prepare a Recommendation for Award under the following circumstances:

(1) procurements for goods and services exceeding $10,000 and construction and construction-related services exceeding $15,000 awarded by sole source procedures pursuant to Section 3-05 of these Rules, and

(2) all other procurements exceeding the small purchase limits.

(b) Content. The Recommendation for Award shall contain, but not be limited to, the following information:

(1) agency name;

(2) PIN;

(3) if other than competitive sealed bidding, a summary of method of procurement used;

(4) if award is made to the bidder whose bid represents the best value to the City pursuant to § 3-02(o) of this title, a summary of the criteria used in determining best value;

(5) date solicitation mailed;

(6) number of businesses solicited;

(7) date of City Record publication and date and publication name of any other advertised notice. If a prequalified vendor list other than HHS Accelerator is used, date(s) of advertisement(s) for prequalified list; if the procurement is from a sole source, the date of the notice of intent to enter sole source negotiations;

(8) date responses to solicitation opened;

(9) for bids, the number of responses and the prices received for each bid that was opened; for convenience, the agency may attach its bid tabulation sheets. For proposals, the number of proposals received, overall technical rating of each proposal, and the proposed price for each proposal that was opened;

(10) summary of responsiveness or non-responsiveness determination;

(11) explanation of responsibility determination, including any Office of Labor Services approval and results of the Department of Investigation name checks of information on the VENDEX questionnaire;

(12) name, address, telephone number, and federal taxpayer's identification number of recommended contractor(s) and, if more than one contractor, details on the specific items awarded each;

(13) dollar amount(s) of contract(s);

(14) basis for award. If award is made to other than the bidder submitting the lowest initial price, detailed reasons shall be included;

(15) listing of approvals needed prior to contract registration;

(16) date and signature of Contracting Officer;

(17) date and signature of all required approvals;

(18) for sole source awards, the number of expressions of interest in response to public advertisement and a summary of the cost/price analysis used to determine that the cost to the City will be fair and reasonable;

(19) all applicable written determinations and written justifications required by these Rules;

(20) for client services, if applicable, an assessment of vendor's performance during the prior contract period (overall rating of latest performance assessment); and

(21) for client services, if applicable, date, period covered, and findings of the latest available financial audit report, the name of the CPA firm that conducted it, and whether the CPA firm was unable to express an opinion as to the adequacy of the provider's books and records.

Section 2-10 VENDOR PROTEST.

(a) Protests. Any vendor may protest a determination of any procurement action pursuant to this section, unless another appeal or protest provision is provided in these Rules. Accelerated procurements, emergency procurements, and small purchases are not subject to vendor protests.

(1) Time for Protest. A protest shall be made within ten days after the protesting vendor knows or should have known of the facts that prompted the protest but no later than ten days after publication of the notice of award.

(2) Form and Content of Protest. The protest shall be filed with the Agency Head and shall briefly state all the facts or other basis upon which the vendor contests the agency decision. Supporting documentation, if any, shall be included. If a vendor has already been selected for the procurement, the Agency

Head shall, upon receipt of the protest, mail a copy of the protest to the selected vendor. Filing of the protest shall be accomplished by actual delivery of the protest documents to the office of the Agency Head. The vendor shall also send a copy of its protest to the ACCO and the New York City Comptroller, Office of Contract Administration.

(3) Agency Head Determination. The Agency Head may, in his or her sole discretion, invite written comment from the selected vendor (if any) or other interested party, and/or convene an informal conference with the protesting vendor, the selected vendor, and/or any other interested party to resolve the protest by mutual consent. The Agency Head's determination with respect to the merits of the protest shall be mailed to the protesting vendor and the selected vendor (if any) within thirty days of receipt of the protest documents. The determination shall state the reasons upon which it is based. Copies of all documents required by this paragraph shall be forwarded to the CCPO and the Comptroller as such documents become available to the agency. The Agency Head's determination shall be final. The procurement action under protest shall not be stayed unless the Agency Head determines that it is in the City's best interest to delay the action.

Section 2-11 PUBLIC HEARING REQUIREMENTS.

(a) Application. Except in cases set forth in subdivision (b) below, prior to entering into any contract or exercising a renewal option in a contract exceeding in value $100,000, the agency shall hold a public hearing to receive testimony regarding the proposed contract.

(b) Exemptions.

(1) The following contracts or exercise of a renewal option in the following contracts are exempt from the requirements of this section:

(i) contracts to be awarded by competitive sealed bidding, except where the basis for award is best value to the City pursuant to 3-02 (o);

(ii) contracts to be awarded by competitive sealed bidding from prequalified lists;

(iii) emergency contracts;

(iv) accelerated procurements; and

(v) contracts where a public hearing may disclose litigation strategy or otherwise impair the conduct of litigation by the City. Where this exemption is claimed, the Corporation Counsel shall make a determination that a public hearing may have an impact on litigation.

(2) Exercise of a renewal option in a contract where the original contract or any prior renewal option was subject to a public hearing is exempt from the requirements of this section.

(3) Contracts to be let that do not differ materially in terms and conditions, as defined herein, from contracts currently held by the City where the parties to such contracts are the same shall be exempt from the public hearing requirements of this section and the Charter, provided that such exemption shall not apply to contracts over ten million dollars in value. Contracts do not differ materially in terms and conditions when they:

(i) contain substantially the same specifications;

(ii) are for substantially the same length of time, except in the case of contracts awarded pursuant to negotiated acquisition where there is a compelling need to extend the contract one or more times beyond the cumulative twelve-month limit and where such extensions awarded pursuant to negotiated acquisition are cumulatively for a period of time no greater than one year;

(iii) contain substantially the same pricing, as determined by the ACCO, taking inflation into account and reflecting fair and reasonable pricing. For the purposes of this paragraph, the consideration of inflation shall be limited to demonstrated changes in the cost of materials and/or labor, as appropriate. "Inflation" shall not include corresponding or other increases in overhead, general selling and administrative expenses, or profit, i.e., increases based on these factors shall not be deemed to result in "substantially the same pricing"; and

(iv) contain substantially the same legal terms.

(c) Public Notice.

(1) Frequency. Notice of public hearings shall be published once in the City Record not less than ten days prior to the hearing date or a shorter period approved by the CCPO.

(2) Required Content. Such notice shall include:

(i) agency name;

(ii) PIN;

(iii) a brief description of the goods, services, or construction to be procured, and method of source selection

(iv) name and address of the proposed vendor, and location of the proposed program, project, or worksite;

(v) dollar amount of the proposed contract; and

(vi) date, time, and place of the public hearing.

(3) Optional Content. For contracts or renewals, the value of which does not exceed one million dollars, such notice may include a provision that if the agency does not receive, within five business days after publication of such notice or shorter period approved by the CCPO, from any individual a written request to speak at such hearing, then the agency need not conduct such hearing. Should the agency choose not to conduct such hearing, the agency shall publish a notice in the City Record canceling such hearing.

(d) Record.

(1) All persons attending who desire to testify shall have the opportunity to do so.

(2) An audiotape or transcript shall be made of the proceedings and shall be public information.

(3) No commitment to make changes in the intended contract award shall be made during the hearing; however, testimony received shall be considered after the hearing is concluded.

Section 2-12 CONTRACT REGISTRATION.

(a) Applicability. Unless otherwise provided by the Charter or these Rules, all contracts, agreements, contract changes, change orders, amendments, modifications, contract time extensions, and "Buy-Against" procurements shall be presented to the Comptroller for registration. Registration of a contract by the Comptroller shall not constitute an approval of the contract nor an approval of the process by which the contract was awarded, nor shall it preclude future audits of the contract. Contracts shall not be registered for less than their full value unless specific written authorization to do so is made by the Agency Head or the ACCO and such written authorization is provided to the Comptroller at the time of registration.

(b) Registration Not Required. The following items need not be registered with the Comptroller:

(1) in the case of City requirements contracts that have been registered with the Comptroller, any purchase orders used to make purchases pursuant to those contracts, or

(2) in the case of contracts let by another governmental entity, any purchase

orders used to make purchases pursuant to those contracts, provided that a copy of the relevant portion of the contract or other required documentation has been filed with the Comptroller.

(c) Documentation. The following documentation shall be submitted for each item required to be registered:

(1) the original executed contract and related contract budget;

(2) a request for encumbrance or advice of award containing:

(i) the name, address, telephone number, and federal taxpayer's identification number of the vendor and the address of the contract worksite;

(ii) the dollar amount of the contract, including the original maximum expenditure and revised maximum expenditure authorized and current encumbrance, and any funding source(s);

(iii) the type of goods, services, or construction to be procured pursuant to the contract;

(iv) the name and/or code of the agency that awarded the contract and the procurement identification number;

(v) the term of the contract or in the case of a construction contract, the approximate starting and scheduled completion date of the contract (and any subsequent extensions), and the project or sub-project to which the contract relates;

(vi) the source selection method utilized and, if applicable, whether the vendor in the case of a competitive sealed bid, was the lowest responsible bidder or, in the case of an RFP, offered the lowest price option;

(vii) the number of responses to a solicitation, invitation to bid, or RFP (excluding a response of "no bid" or "no proposal");

(viii) an indication whether the vendor is a not-for-profit organization or has been certified by DEFO as a women-owned or minority-owned business enterprise; and

(ix) any other information requested by the Comptroller and agreed to by the CCPO, or required by law.

(3) the VENDEX business entity, principal, not-for-profit organization and individual questionnaire(s). This requirement will remain in effect until such time as such information is available on-line by computer to the Comptroller prior to registration;

(4) copies of the Recommendation for Award/Renewal and the presolicitation review report required by these Rules;

(5) if applicable, capital encumbrance justification memorandum and fixed asset detail document or fixed asset waiver document;

(6) certificate of legal authority by the Corporation Counsel; and

(7) certificate of Procedural Requisites and, if applicable, the determination required by Section 313(b)(2) of the Charter; and

(8) in those cases where contracts have been changed pursuant to these Rules, a determination by the ACCO explaining good and sufficient cause for such contract change. Where such explanation pertains to a request for additional time to complete a new procurement to replace a current contract, the explanation shall state the date by which such new procurement will be completed.

(d) Date of Filing. The date of filing shall be the date by which all materials required in subdivision (c) above have been delivered to the Comptroller. Following such date of filing, any questions by the Comptroller regarding any item shall be responded to by the agency forthwith.

(e) Exceptions. The requirement for registration prior to the effectiveness of the contract is waived under the following circumstances:

(1) contracts awarded on an emergency basis;

(2) contracts awarded on the basis of an accelerated procurement; and

(3) contracts for the provisions of goods, services, or construction that are not to be paid for out of the City treasury or out of monies under the control of the City. However, within thirty days of awarding such a contract, the board of the entity awarding the contract shall file with the Mayor or the Mayor's designee a copy of the contract and any related materials specified by the Mayor for inspection by the public and elected officials.(4) For contracts described in subdivisions (e)(1) and (2) above, the awarding agency shall, within thirty days of award, submit a copy of the contract (and such related materials as are included in subdivision (c) of this section) to the Comptroller for registration and for an audit of the procedures and of the basis for the determination of the need for an emergency or accelerated procurement.

(f) Refusal of Comptroller to Register the Contract. Upon making a determination that there is a basis for refusing to register the contract, the Comptroller shall promptly notify the ACCO of that determination and return the contract to the ACCO.

CHAPTER 3 - METHODS OF SOURCE SELECTION

Section 3-01 POLICY.

(a) Methods of Source Selection. Unless otherwise authorized by law, all City procurements shall be made by one of the methods authorized by these Rules.

(b) Preference for Competitive Sealed Bidding. Except as otherwise provided in these Rules, contracts shall be awarded by competitive sealed bidding. In the case of construction, where appropriate in the judgment of the ACCO, and in accordance with these Rules, competitive sealed bidding from prequalified vendors or any other appropriate procurement method may be used.

(c) Preference for Competitive Sealed Proposals in Certain Contracts. Procurement by competitive sealed proposals, including where applicable, through HHS Accelerator, is the preferred method for awarding contracts for non- commodity data processing equipment and for information technology, non-commodity data processing, architectural, engineering, client, legal, accounting, financial, training, educational, cultural, medical, managed care, employee health benefits, scientific, management, research, performing arts, and systems consultation services, and/or other similar services. A "Special Case" determination is not required for such procurements.

(d) "Special Case". Agencies may elect to use one of the methods of source selection listed herein, after making the determination that it is not practicable or not advantageous to the City to use competitive sealed bidding as required by this section.

(1) Methods of Source Selection for which "Special Case" Determination is Required: A "Special Case" determination is required for each case in which one of the following methods of source selection is used:

(i) Competitive sealed bidding from prequalified vendors, except as provided in Section 3-10 (a);

(ii) Competitive sealed bidding where the award will be made to the bidder whose bid represents the best value to the City;

(iii) Competitive sealed proposals (including multi-step process);

(iv) Competitive sealed proposals from prequalified vendors;

(v) Negotiated acquisition;

(vi) Sole source procurement;

(vii) Demonstration project for innovative products, approaches, or technologies;

(viii) Innovative procurement method; or

(ix) Government-to-government purchase.

(2) "Special Case" Circumstances. A special case is a circumstance recognized by these Rules in which it is not practicable or not advantageous to the City to use competitive sealed bidding for one of the following reasons:

(i) specifications cannot be made sufficiently definite and certain to permit selection based on bid price or evaluated bid price alone;

(ii) judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of price, quality, and other factors;

(iii) it is in the best interest of the City for goods or standard services to be awarded on the basis of best value to the City by optimizing quality, cost, and efficiency;

(iv) there is only one available source, as set forth in these Rules;

(v) testing, experimentation, or evaluation is required to determine the feasibility and application of an innovative product, approach, or technology not currently used by the City;

(vi) the need for advance screening of qualifications is paramount and prequalification is appropriate for one of the reasons set forth in these Rules;

(vii) circumstances justifying the use of negotiated acquisition as set forth in these Rules; or

(viii) to test and evaluate the feasibility and application of innovative procurement methods not currently used by the City or provided for in these Rules.

(3) Source Selection in a Special Case. Upon determining that there is a special case, the Contracting Officer shall select the most competitive alternate method of source selection among those listed in Section 3-01 above which is practicable and advantageous to the City.

(4) Special Case Determination. The determination that there is a special case, and the reasons that the method of source selection is the most competitive that is appropriate under the circumstances, shall be made in writing in advance of issuing solicitations, as part of any presolicitation review required by these Rules, and shall be approved by the ACCO. Procurements by negotiated acquisition shall require the written approval of the CCPO prior to initiating negotiations.

Section 3-02 COMPETITIVE SEALED BIDDING.

(a) Application. This section shall apply to all procurements made by competitive sealed bidding.

(b) Invitation for Bids.

(1) Use. The IFB is used to initiate a competitive sealed bid procurement.

(2) Content. The Invitation for Bids shall include the following:

(i) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids; requirements for the electronic submission of bids, if any; time, date, and location of any pre-bid conferences (and a statement whether such conferences are mandatory); and the address where bids are to be delivered;

(ii) the purchase description, delivery and performance schedule, and any special instructions necessary;

(iii) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable;

(iv) a statement regarding how the award will be made:

(A) for construction, a statement that award shall be made to the lowest responsive and responsible bidder;

(B) for purchase of goods and standard services, a statement that award shall be made to the lowest responsive and responsible bidder or to the bidder whose bid represents the best value to the City by optimizing quality, cost and efficiency. If award will be made on the basis of best value to the City, such statement shall include how best value will be determined in accordance with 3-02(o);

(v) if not included in the bid documents, a notice of where vendors may obtain a copy of all contractual terms and conditions or other project-related material;

(vi) a provision indicating bidder liability for bidder failure to execute contract and to provide any required security within ten days after notice of award pursuant to Section 313(d) of the Charter;

(vii) a provision that bidders should give specific attention to the identification of those portions of their bids that they deem to be

confidential proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the bid;

(viii) a notice of the bidder's rights to appeal certain decisions;

(ix) a notice describing the City's prompt payment policy, including an explanation of the requirements for invoicing.

(x) a notice that prices are irrevocable until contract award, unless the bid is withdrawn, and that bids may be withdrawn only after the expiration of forty-five days from bid opening and only in writing received by the agency and in advance of award;

(xi) a requirement for acknowledgment of amendments;

(xii) a provision concerning the submission and consideration of alternate bids, if applicable;

(xiii) a notice that contract award is subject to provisions of the MacBride Principles Law;

(xiv) a notice that contract award is subject, if applicable, to Section 6-129 of the New York City Administrative Code (M/WBE and EBE program), as well as to applicable provisions of federal, State, and other local laws and executive orders requiring affirmative action and equal employment opportunity;

(xv) where applicable, a notice that contract award is subject to completion of a VENDEX questionnaire and review of that information by the Department of Investigation;

(xvi) where applicable all information required pursuant to Section 312(a) of the Charter;

(xvii) the name, address, and telephone number of a contact person to whom questions and correspondence relating to the bid solicitation can be addressed;

(xviii) the following statement:

The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the bid process should inform the Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, NY 10007, (212) 669-2323; and

(xix) a statement that the bidder will be required to comply, if applicable, with Section 220/230 of the New York State Labor Law, Section 6-109 of the New York Administrative Code, Mayoral Executive Order 102 of 2006, and with all other federal, State, and local labor laws and regulations, including but not limited to providing on-the-job training opportunities and payment of prevailing wages and living wages; and

(xx) where applicable for construction contracts, the following shall be additionally included:

(A) a specific description and exact location of the construction and the date and time for the bidder to visit the job site when the solicitation requires a mandatory pre-bid visit to and examination of the job site;

(B) a reference to all applicable documents which will subsequently become a part of the contract, such as the specifications and the terms and conditions approved by Corporation Counsel;

(C) a statement establishing minimum insurance requirements which the City will require of the bidder if successful and conveying to the bidder any insurance coverage which the City will carry that will afford the contractor insurance coverage;

(D) a statement that the bidder will be required to meet all licensing or permit requirements required to perform the construction;

(E) a statement of instructions relative to the return of bid documents if the bidder elects not to submit a bid thereunder and notification to the City of the bidder declining to bid;

(F) a statement that all bid documents must be returned to the City upon request;

(G) the form in which the bid is to be submitted (either specified in the invitation for bids or referenced as part of the specifications or attached forms);

(H) a requirement that for projects on which more than one prime contractor will be involved, all bidders examine the invitation for bid packages for all other parts of the project; and

(I) a notice, for those contracts not otherwise subject to Section 6-129 of the New York Administrative Code (M/WBE and EBE Program), that contract award is subject to the provisions of Section

6-108.1 of the New York City Administrative Code relating to the LBE program and its implementing rules; and

(J) a requirement that, where the preparation of separate specifications is not required for plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning apparatus; and electric wiring and standard illumination fixtures pursuant to New York General Municipal Law §101, the bidder shall submit with its bid a separate sealed list that names each subcontractor that the bidder will use to perform such work on the contract, and the agreed-upon amount to be paid to each.

(c) Bidding Time. Bidding time is the period of time between the date of public advertisement of the IFB and the time and date set for receipt of bids. The bidding time shall be not less than fifteen days before the bid opening date.

(d) Bidder Submissions.

(1) Bid Form and Content. The IFB shall provide a form on which the bidder shall insert the bid price, or other information requested, if any, pursuant to 3-02 (o)(1), and shall sign and submit along with all other necessary submissions. Bids shall be typewritten or written legibly in ink. Erasures or alterations shall be initialed by the signer in ink. All bids shall be signed in ink. The bid invitation also shall require that the bid be submitted in a sealed envelope, addressed as required in the bid documents, on or before the time and at the place designated in the bid documents. If so provided in the solicitation, sealed bids may be submitted electronically. Where award will be made to the bidder whose bid represents the best value to the City, the IFB may also provide that other information requested, if any, may be submitted up to thirty (30) days from the bid opening by all bidders whose bids are to be considered pursuant to 3-02(o)(1)(iii).

(2) Bid Samples and Descriptive Literature. The IFB shall state that the submission of bid samples and descriptive literature, regardless of any attempt by a bidder to condition the bid, will not be deemed to vary any of the provisions of the IFB.

(e) Public Notice.

(1) Notice of Solicitation.

(i) Distribution. IFBs or notices of their availability must be electronically mailed to a sufficient number of vendors, including all vendors on the appropriate citywide bidders list established by the CCPO for the purpose of securing competition. IFBs or notices of their availability may be sent electronically to vendors on agency-specific bidders lists, in addition to the appropriate citywide bidders list maintained by the CCPO, only with approval of the CCPO. Such IFBs or notices must be sent electronically at

least fifteen (15) days in advance of the due date for bids, or at least twenty-two (22) days in advance of the due date for bids which are subject to §6-129 of the New York City Administrative Code (M/WBE and EBE program). An agency may, upon request of a vendor, provide IFBs or notices by mail, fax, hand delivery, or otherwise. Where the notice does not include all IFB documents, an additional five (5) days must be allowed. Notices of availability must indicate, at minimum:

(A) the name of the agency and, if appropriate, the specific division or bureau soliciting the bids;

(B) title and brief description of the goods, services, or construction required;

(C) specific information about how, when, and where the IFB is available;

(D) the required fee or deposit amount, if any, for obtaining the IFB;

(E) the time, date, and location of any pre-bid conference or site visit, if any, and if attendance is mandatory;

(F) the date, time, and location for the receipt and opening of bids;

(G) the name and phone number of the agency contact person, including email address, if applicable; and

(H) the citywide bidders list used.

(ii) Publication. This subparagraph shall apply to competitive sealed bids above the small purchase limits except that it shall not apply where vendors will be solicited from a PQL.

(A) Frequency. Notice of solicitation shall be published at least once in the City Record and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication not less than fifteen days before the bid opening date with the exception of accelerated procurements, which shall appear not less than three business days before the bid opening date.

(B) Content. Such notice shall include:

((a)) agency name;

((b)) PIN;

((c)) title and/or brief description of the goods, services, or construction to be procured;

((d)) estimated quantity, if any;

((e)) how the solicitation documents may be obtained;

((f)) date and time by which, and the place where, bids shall be submitted and shall be publicly opened; and

((g)) required vendor qualifications or eligibility requirements, if any and

((h)) A statement, if applicable, that the solicitation is subject to Section 6-129 of the Administrative Code (MWBE and EBE program).

(2) Notice of Vendor Selection.

(i) Frequency. Notice of vendor selection exceeding the small purchase limits shall be published once in the City Record within fifteen days after registration of the contract.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction procured;

(D) name and address of the vendor;

(E) dollar value of the contract; and

(F) procurement method by which the contract was let.

(3) Public Availability. A copy of the IFB shall be available for public inspection at a location in the agency offices designated by the ACCO.

(f) Bidders Lists.

(1) The CCPO shall compile citywide lists of vendors interested in being solicited for bids. In addition, the CCPO may authorize one or more agencies to maintain citywide or agency bidders lists. Bidders lists shall be classified by standard categories of goods, services, and construction that are sufficiently

detailed to provide meaningful distinctions among categories. Bidders lists shall include the names, addresses, EIN, e-mail addresses, and telephone numbers of the vendors. In addition, bidders lists shall indicate which of the listed businesses have been certified by DSBS as minority owned, women owned and emerging business enterprises.

(2) The CCPO and agencies, if authorized by the CCPO to maintain bidders lists, shall cause to be continuously published in the City Record notice of the availability of applications for vendors to be added to citywide bidders lists or agency bidders lists for goods, services, and construction regularly procured by the City. Every effort shall be made to publish notice in a manner that encourages minority, women and emerging business enterprises to certify with DSBS.

(3) Application by vendors for placement on the citywide bidders lists or an agency's bidders list shall be continuously available on request from the vendor.

(4) Vendors that fail to respond to solicitations or notices of availability of procurement opportunities on three consecutive invitations within one standard category may be removed by the CCPO from the applicable citywide bidders list or by the ACCO from the applicable agency bidder list after notice to the vendor. A "No Bid" statement on a returned bid shall be considered a response. Vendors may also be removed from a citywide bidders list pursuant to procedures prescribed by the CCPO. Application for reinstatement shall be the responsibility of the vendor.

(5) Unless otherwise provided, inclusion or exclusion of the name of a vendor on a bidders list does not indicate that the vendor is responsible in respect to a particular procurement or otherwise is capable of successfully performing a City contract.

(g) Prequalified Vendor Lists. In accordance with these Rules, bids may be solicited from a list of prequalified vendors.

(h) Pre-Bid or Pre-Solicitation Conferences. Pre-bid or pre-solicitation conferences may be conducted by the ACCO to explain the procurement requirements. Written notice of any conference shall be provided to all prospective vendors. A pre-bid conference should be held long enough after the IFB has been issued to allow bidders to become familiar with the solicitation documents, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the IFB unless a change is made by amendment as provided in this section. A summary or transcript of the conference shall be prepared and shall be made available and shall be posted on the City's website. A record of attendance shall be kept of all conferences and shall be made available and shall be posted on the City's website.

(i) Amendments to IFBs.

(1) Authority. The ACCO shall authorize the issuance of any amendment.

(2) Form. Each amendment to an IFB shall be identified as such, shall be set forth in writing, and shall require that the bidder acknowledge receipt of all amendments issued as a condition for consideration of its bid. The amendment shall reference the portion of the IFB it amends.

(3) Distribution. Amendments shall be sent to all prospective vendors known to have received an IFB.

(4) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective vendors to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible, and stated in the amendment or shall be communicated by electronic mail, facsimile, or telephone and confirmed in the amendment. A notice of amendment shall be posted on the City's website.

(j) Pre-Opening Modification or Withdrawal of Bids.

(1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the IFB before the time and date set for bid opening.

(2) Disposition of Bid Security. If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

(k) Late Bids, Late Withdrawals, and Late Modifications.

(1) Policy. Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Late bids and modifications shall not be opened until after registration of the contract.

(2) Exception. A late modification of a successful bid that makes its terms more favorable to the City shall be considered at any time it is received and may be accepted upon the approval of the ACCO.

(l) Receipt, Opening, and Recording of Bids.

(1) Receipt. Upon its receipt, each bid and modification shall be time and date-stamped, but not opened, and stored in a secure place until the time and date set for bid opening. Before bid opening the agency may not disclose the identity of any bidder.

(2) Opening and Recording. Bids and modifications shall be opened publicly, at the time, date, and place designated in the IFB. The name of each bidder, the bid price, and such other information as is deemed appropriate shall be read aloud or

otherwise made available. These requirements may be met through access to a computer terminal at the location where bids are to be opened, provided that paper documents are available upon request at the time of bid opening. This information also shall be recorded at the time of bid opening. The bids shall be tabulated or a bid abstract prepared and made available for public inspection. The opened bids shall be available for public inspection at a reasonable time after bid opening but in any case before vendor selection except to the extent the bidder designates trade secrets or other proprietary data to be confidential. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Prices, makes, and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available at a reasonable time after bid opening but in any event before vendor selection regardless of any designation to the contrary at the time of bid opening. For bids on construction contracts submitted in accordance with Section 3-02 (b)(xx)(J) of these Rules, the sealed list of subcontractors submitted with the low bid shall be opened after such low bid has been announced and the names of the subcontractors shall be announced. The sealed lists of subcontractors submitted by all other bidders pursuant to Section 3-02 (b)(xx)(2)(J) of these Rules shall be returned to such bidders unopened after the contract award.

(3) Confidential Data. The ACCO shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by Agency Counsel. Any decision not to honor a request for confidentiality shall be communicated in writing to the bidder making the submission.

(m) Mistakes in Bids.

(1) General. Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible, but only to the extent that it is not contrary to the interest of the City or the fair treatment of other bidders.

(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 3-02(j) of these Rules.

(3) Confirmation of Bid. When the Contracting Officer knows or has reason to conclude after bids have been publicly opened that a mistake has been made, such officer shall request from the bidder written verification of the bid. If the bidder alleges mistake, the bid may be corrected or withdrawn upon approval of the ACCO if the following conditions are met:

(i) Minor Informalities. Minor informalities are matters of form, rather than substance, evident from the bid document or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City. Examples include the failure of a bidder to:

(A) return the number of signed bids required by the IFB, or

(B) acknowledge receipt of an amendment to the IFB, but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms, or the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(ii) Mistakes Where Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(iii) Mistakes Where Intended Correct Bid is Not Evident. Mistakes may not be corrected after bid opening. A bidder may be permitted to withdraw a bid where a unilateral error or mistake has been discovered in the bid and the Contracting Officer makes the following determination, which shall be approved by the ACCO:

(A) the mistake was known or made known to the agency prior to vendor selection or within three days after the opening of the bid, whichever period is shorter;

(B) the price bid was based on an error of such magnitude that enforcement would be unconscionable;

(C) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;

(D) the error in bid is actually due to an unintentional and substantial arithmetic error or unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and

(E) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.

Upon the approval of the ACCO, the bid may be withdrawn, and the bid bond or other security returned to the bidder. If the bid was the low bid or the bid that represents best value, then the contract shall either be awarded to the next lowest bidder or bidder that represents the next best value to the City, as appropriate, or resolicited pursuant to these Rules. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

(4) Mistakes Discovered After Vendor Selection. Mistakes shall not be corrected after vendor selection except where the ACCO, subject to the approval of the CCPO, makes a determination that it would be unconscionable not to allow the mistake to be corrected.

(5) Determinations Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the ACCO shall prepare a determination showing that the relief was granted or denied in accordance with these Rules.

(n) Withdrawal of Bids. Except as provided for in Section 3-02(j) a bidder may not withdraw its bid before the expiration of forty-five days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award.

(o) Bid Evaluation and Vendor Selection.

(1) Vendor Selection.

(i) Contracts for Construction. The responsible bidder whose bid meets the requirements and objectively measurable evaluation criteria set forth in the IFB, and whose bid price is the lowest responsive and responsible bid price or, if the IFB has so stated, the lowest responsive and responsible evaluated bid price, shall be selected for the contract. A bid shall not be evaluated for any requirement or criterion that is not disclosed in the IFB.

(ii) Contracts for Purchase of Goods and Standard Services. Prior to the bid, the ACCO will determine whether the goods or standard services will be awarded to the lowest responsive and responsible bidder or to the responsive and responsible bidder whose bid represents the best value to the City. The responsive and responsible bidder whose bid meets the requirements and objectively measurable evaluation criteria set forth in the IFB, and whose bid price is the lowest, or whose bid represents the best value to the City by optimizing quality, cost and efficiency, will be selected for the contract.

(iii) If award will be made based on best value, best value may be determined by the ACCO, or the ACCO may convene a committee to make such determination. Any such committee must consist of persons with knowledge, expertise and experience sufficient to make a fair and reasonable determination. As set forth below the ACCO, or the committee as the case may be, may determine best value by consideration of price together with other factors deemed relevant by the ACCO and set forth in the IFB. In making such determination the ACCO, or committee, must consider the low responsive bid and the next low responsive bids that are within ten percent (10%) of the low responsive bid in price, including any bids that have been adjusted pursuant to subparagraph (iv) of this paragraph, or such higher percentage as approved by the CCPO either on an individual basis or by category or class. Such factors may include:

(1) features of the offered product or service set forth in detailed specifications for the product offered;

(2) warranties and or maintenance to be provided with the product or service;

(3) references, past performance and reliability, including reliability or durability of the product being offered and current or past experience with the provision of similar goods or services;

(4) organization, staffing (both members of staff and particular abilities and experience), and ability to undertake the type and complexity of the work;

(5) financial capability; and

(6) record of compliance with all federal, State and local laws, rules, licensing requirements, where applicable, and executive orders, including but not limited to compliance with existing labor standards and prevailing wage laws.

The ACCO, or committee, may consider any and all information related to such factors in determining best value and may require additional information to be submitted by the bidders with the bid, or alternatively, within up to thirty (30) days from the bid opening from all bidders whose bids are to be considered pursuant to in 3-02(o)(1)(iii). If a committee is used to evaluate the bids, then written evaluation forms shall be completed to record the evaluation of the bids and shall be signed and dated by all members of the committee.

(iv) If award will be made based on best value, a certified M/WBE in a group for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code must, except with the permission of

the CCPO, be given a price preference of 10% and will be evaluated as if the bid price were 10% lower.

(2) Negotiation with the apparent lowest responsive and responsible bidder or responsive and responsible bidder providing best value. Upon determination of the apparent lowest responsive and responsible bidder or responsive and responsible bidder providing best value, pursuant to 3-02(0)(1), and prior to award, the Contracting Officer may elect to open negotiations with the selected vendor in an effort to improve the bid to the City with respect to the price only if award will be made to the lowest responsive and responsible bidder, or if award will be made to the responsive and responsible bidder whose bid represents the best value to the City, with respect to any of the factors considered in determining best value. In the event the apparent winning bidder declines to negotiate, the Contracting Officer may elect to either award the contract to the apparent winning bidder or may, upon written approval by the ACCO, reject all bids in accordance with this section. The result of negotiations, if any, shall be documented in the Recommendation for Award.

(3) Award. Upon the determination of the apparent winning bidder pursuant to 3-02(o)(1), a Recommendation for Award shall be approved by the ACCO and the contract shall be awarded to that bidder. Where the award is based on best value to the City, the ACCO shall set forth in the Recommendation for Award the reasons that the bid represents the best value to the City and the factors considered by the agency.

(p) Low Tie Bids.

(1) Definition. Low Tie Bids are low responsive bids from responsible bidders that are identical in price, meeting all the requirements and criteria set forth in the IFB when the selection of the winning bidder is based on price alone.

(2) Vendor Selection. In the case of low tie bids, the ACCO shall break the tie in the following order of priority:

(i) Select a certified New York City minority owned, woman-owned or emerging business entity bidder;

(ii) Select a New York City bidder;

(iii) Select a certified New York State small, minority or woman-owned business bidder;

(iv) Select a New York State bidder;

(v) Conduct a drawing. Tie bidders shall be invited to witness the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

(3) Record. A record shall be made of tie bids received, and the method used to break the tie. The ACCO shall monitor the incidence of low tie bids in a systematic manner.

(q) Single Bid. When a single bid has been received in response to an IFB, a vendor may be selected only after the ACCO has determined that a sufficient number of other potentially responsive vendors have had a reasonable opportunity to bid; why, as a result of inquiries made by the agency, other vendors chose not to submit bids; that the bid submitted meets minimum requirements of the IFB; that the price is fair and reasonable, and that resolicitation is not in the best interest of the City.

(r) Alternate Bids. Unless alternate bids are requested in the solicitation, such bids may not be accepted.

(s) Notification of Non-Responsiveness or Non-Responsibility. If the ACCO determines that a bidder is either not responsible or not responsive, such bidder shall immediately be notified in writing of such determination and the reasons therefor, and the right to appeal the determination, if applicable. A copy of the notification shall be filed with the CCPO and Comptroller.

(t) Multiple Award Task Order or Purchase Order Contracts.

(1) Determination. Multiple award task order contracts for standard services or multiple award purchase order contracts for goods may be awarded upon a determination by the ACCO that it is in the best interest of the City to award multiple contracts for goods or standard services to multiple contractors and to allocate work among such contractors through a task order or purchase order system. The criteria to be considered by the ACCO in making such determination may include the following: the nature of the goods or standard services to be procured; the expected frequency of task order or purchase order issuance; the capacity of vendors to provide all of the required services within the required timeframes; and the potential advantage of multiple contracts (e.g., more favorable terms; more competitive pricing, etc.).

(2) Method.

(i) Multiple awards may be made for contracts for goods or standard services, pursuant to competitive sealed bids where award is made based on price only, or based on best value pursuant to the criteria set forth in 3-02(o)(1), in conjunction with the procedures prescribed in this subdivision. The IFB shall also state the procedures and criteria to be used in selecting the vendor to perform on an individual task order or goods to be purchased pursuant to an individual purchase order. The agency may:

(a) select the vendor that represents the best value to the City for that particular task order or purchase order, as determined pursuant to 3-02(o), based on each vendor's bid, or

(b) the agency may solicit offers for each task order or purchase order from all awarded vendors. If the agency solicits offers for each task order or purchase order, each vendor shall receive each solicitation and have a reasonable opportunity to compete to provide the standard services or goods.

The agency may set forth an alternative method of assigning task orders or purchase orders if it is determined by the CCPO to be in the City's best interest and is set forth in the IFB. In the event that such alternative method is used for standard services, each vendor with a contract shall receive notice of assignment of each task order at the time each task order is issued, regardless of whether each vendor with a contract received the solicitation for the task order.

(ii) The following list constitutes acceptable alternative methods of assigning task orders:

(A) rotation, or other non-discretionary method of assignment, including where assignment pursuant to such method may be varied based on stated criteria (e.g., capacity or past performance);

(B) assignment to or competition among particular vendor(s) with technical expertise particularly suited to the task order;

(C) assignment to a particular vendor based on a vendor's particular geographic location, experience or knowledge;

(D) assignment to a particular vendor based on the agency's need to distribute task orders among vendors; and

(E) any other method approved by the CCPO as set forth in the IFB.

(iii) In the event that a vendor selected pursuant to one of the selection methods in paragraphs (i) or (ii) above is unable to perform the services on an individual task order or provide the goods to be purchased pursuant to an individual purchase order for reasons such as lack of capacity or conflict of interest, the agency may disqualify that vendor for purposes of that task order and select another vendor with approval of the CCPO.

(iv) Price shall be the primary factor considered in making individual vendor selection decisions, and no task order shall be issued unless the ACCO determines that the proposed price is fair and reasonable. Prices set forth in a multiple award contract shall represent maximum prices that may be set forth in individual task orders issued to that vendor.

(3) Duration. Unless otherwise approved by the CCPO, contracts awarded pursuant to this section shall have a total term including all renewals, of not more than three years. Task orders, or purchase orders may extend beyond the

expiration of the contract term, in which event the terms and conditions of the contract shall continue to apply to the task order or purchase order until its termination or expiration. Task orders, or purchase orders, shall have a maximum term of three years or, if issued for a specific project, until the specific project is completed. Notwithstanding the above, a task order may be extended beyond or further extended beyond the expiration of the contract term, or beyond the expiration of the task order, with approval of the CCPO.

(u) Rejection of Bids. The ACCO may reject all bids and may elect to resolicit by bid in accordance with this section or by other method authorized by these Rules.

(v) Resolicitation in Cases of Failed Bids Due to Defects in the Solicitation Documents. Under the circumstances set forth in this subdivision, the ACCO may determine that it is appropriate to reject all bids after opening and before vendor selection and to complete the acquisition by a new solicitation for which notice is provided as set forth in this subdivision.

(1) This procedure may be used where at least five responses to the solicitation have been received, and despite efforts to address problems in the solicitation by means of pre-bid conferences and issuance of amended specifications in accordance with these Rules, all responses are found to be non-responsive as a result of the same defect(s) in the specification or other solicitation documents.

(2) When using this procedure, the ACCO shall:

(i) make a determination that:

(A) five or more bids have been received in response to the original solicitation;

(B) all of the bids have been found to be non-responsive as a result of the same previously unresolved defect(s) in the solicitation documents; and

(C) prior to opening the bids the agency had made diligent efforts to discover and correct defects in the solicitation documents by inviting questions from prospective bidders, holding pre-bid conferences, and issuing amendments to the solicitation documents as appropriate;

(ii) prepare a corrected solicitation containing the statement that it is a correction of a previously defective solicitation, setting forth the new bid opening date and time, and conspicuously identifying the portions of the original solicitation that have been corrected; and

(iii) deliver the corrected solicitation at least ten days in advance of the new bid opening date and time to all bidders who responded to the initial

notice of the solicitation by obtaining copies of the original solicitation documents, whether or not they actually submitted bids.

(w) Disposition of Bids. All bids shall be retained. When bids are rejected or a solicitation canceled after bids are received, the bids shall be retained and the bid security, if any, shall be promptly returned, and the file so documented.

Section 3-03 COMPETITIVE SEALED PROPOSALS.

(a) The Request for Proposals (RFP) – Contents. RFPs must include the following data:

(1) statement that the contract award will be made to the responsible proposer whose proposal represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP, including the quantitative preference to be provided to proposals submitted by certified M/WBEs for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code;

(2) statement of work or scope of services statement, performance requirements, and any special instructions;

(3) the specific criteria and the relative weight of each criterion or category of criteria that will be used to evaluate the proposals;

(4) statement of how price will be evaluated. In addition, the following statements regarding price must be included:

(i) a notice that prices shall be irrevocable until contract award, unless the proposal is withdrawn, and that offers may be withdrawn only after the expiration of ninety days (or such longer period as is specified in the solicitation) after opening of proposals, in writing received by the agency prior to award;

(ii) if applicable, request for cost breakdown of the proposed price;

(5) proposal submission requirements including requirements, if any, for the electronic submission of proposals; if applicable, that technical and price proposals shall be submitted in separate sealed envelopes (electronic or paper); and the time and date after which proposals will not be accepted as well as location of proposal submission;

(6) other information such as delivery dates or time frames within which the work must be completed. Where it is anticipated that a contract will extend beyond one year, the following information must be included in any solicitation, in addition to any other requirements of these Rules:

(i) a statement of intent to award a multi-term contract, and an estimate of the quantity of services required for the proposed contract period;

(ii) for client services only, a request for a proposal of a total price which shall be binding in the first year and may be negotiable from year to year thereafter;

(iii) that the multi-term contract is subject to modification or cancellation if adequate funds are not appropriated to the agency to support continuation of performance in any fiscal year succeeding the first;

(iv) that the multi-term contract is subject to modification or cancellation if the vendor's performance is not satisfactory;

(v) that the Contracting Officer shall notify the vendor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-term contract for each succeeding fiscal year;

(vi) for client services only, whether proposers shall submit prices for the first year, for the entire period of performance, or for some portion of the period; and will be reimbursed in the event of cancellation;

(vii) a statement setting forth those costs (if any) for which the vendor will be reimbursed in the event of cancellation;

(7) general as well as special terms and conditions, if applicable;

(8) a notice of the proposer's rights to appeal certain decisions;

(9) a notice of the City's prompt payment policy, including an explanation of the requirements for invoicing;

(10) a requirement for acknowledgment of amendments;

(11) if applicable, a request for a description of experience in the line of work being considered (including references);

(12) if applicable and necessary in the judgment of the Contracting Officer, a request for description of staff capability along with the resumes of key individuals who will work on the contract;

(13) a notice that although discussions may be conducted with offerors submitting acceptable proposals, award may be made without any discussions;

(14) if applicable, provision on the submission and consideration of multiple or alternate proposals;

(15) a provision that proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposals;

(16) a notice that contract award is subject to the provisions of the MacBride Principles Law;

(17) a notice that contract award is subject, if applicable, to Section 6-129 of the New York City Administrative Code (M/WBE and EBE Program), as well as to applicable provisions of federal, State, and other local laws and executive orders requiring affirmative action and equal employment opportunity;

(18) if applicable, a notice that contract award is subject to completion of a VENDEX questionnaire and review of that information by the Department of Investigation;

(19) a notice, for those contracts not otherwise subject to Section 6-129 of the New York Administrative Code (M/WBE and EBE Program), that contract award is subject to the provisions of Section 6-108.1 of the New York City Administrative Code relating to the LBE program and its implementing rules;

(20) where applicable, all information required pursuant to Section 312(a) of the Charter;

(21) the following statement:

> The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the proposal process should inform the Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, NY 10007; telephone number (212) 669-2323; and

(22) name, address, and telephone number of contact person; and

(23) if applicable, information regarding multiple award task order contracts for services.

(b) Client Services RFPs.

(1) Requirement for a concept report.

At least 45 days prior to issuing an RFP for a new client services program, the agency shall publicly release a concept report regarding such RFP.

(i) For the purposes of this section, the term "new client services program" shall mean any program that differs substantially in scope from an agency's current contractual client services programs, including, but not limited to, substantial differences in the number or types of clients, geographic areas, evaluation criteria, service design, or price maximums or ranges per participant, if applicable.

(ii) For the purposes of this section, the term "concept report" shall mean a document outlining the basic requirements of an RFP for client services contracts and shall include, but not be limited to, the following information:

(A) purpose of the RFP;

(B) planned method of evaluating proposals;

(C) proposed term of the contract(s);

(D) procurement timeline, including but not limited to, the expected start date for the new contract(s), expected RFP issuance date, approximate proposal submission deadline and expected award announcement date;

(E) funding information, including but not limited to, total funding available for the RFP and sources of funding, anticipated number of contracts to be awarded, average funding level of contracts, anticipated funding minimums, maximums or ranges per participant, if applicable, and funding match requirements, if any;

(F) program information, including, but not limited to, as applicable, proposed model or program parameters, site, service hours, participant population(s) to be served and participant minimums and/or maximums;

(G) proposed vendor performance reporting requirements.

(iii) Notwithstanding the issuance of a concept report, the agency may change the above-required information at any time after the issuance of such concept report.

(iv) Prior to release of the concept report, the agency shall publish a notification of the release in five consecutive editions of the City Record

and electronically on the City's website in a location that is accessible to the public.

(v) Upon release, the concept report shall be posted electronically on the City's website in a location that is accessible to the public.

(vi) Non-compliance with this section shall not be grounds to invalidate a contract.

(2) "Open ended" RFPs. For a client services program in which there is available funding for more than the available responsible vendor, and for which the requirements and qualifications are unusually complex and difficult to predict (such as Uniform Land Use Review Procedures approvals of appropriate sites, licenses, etc.) and for which interested potential vendors may become qualified during the course of a year, the ACCO may designate the applicable RFP as an "open-ended RFP." If an RFP is so designated, the agency shall publish in the City Record quarterly a notice of solicitation, clearly stating that the RFP may be obtained at any time and that proposals may be submitted in response to the RFP on an on-going basis. When an agency decides to terminate the open-ended RFP, it shall publish such determination in the City Record.

(c) Proposal Preparation Time and Form.

(1) Proposal preparation time shall be set to provide vendors a reasonable time to prepare their proposals. A minimum of twenty days shall be provided. For those proposals which are subject to Section 6-129 of the New York City Administrative Code (M/WBE and EBE program), a minimum of twenty seven (27) days shall be provided. The manner in which proposals are to be submitted, including any forms for that purpose, shall be designated as a part of the RFP.

(2) For client services, the ACCO shall be responsible for ensuring that an extract or copy of the scope of work is available for public inspection upon request at the agency issuing the solicitation and that the notice of the solicitation includes a description of the proposed service area and the name and telephone number of an agency individual who can be contacted to provide a copy of the extract or the scope of work.

(d) Public Notice.

(1) Notice of solicitation.

(i) Distribution. RFPs or notices of their availability and their notices of solicitation must be posted on the City's website in a location that is accessible to the public simultaneously with their publication. RFPs and their notices of solicitation must also be electronically mailed to a sufficient number of vendors, including all vendors on the appropriate citywide bidders list established by the CCPO pursuant to §3-02(f) at least twenty

(20) days prior to the due date, or within the time frames authorized by §3-03(h). An agency may, upon request of a vendor, provide RFPs or notices by mail, fax, hand delivery, or otherwise. RFPs or notices of their availability may be electronically sent to vendors on agency-specific bidders lists, in addition to the appropriate citywide bidders list maintained by the CCPO, only with approval of the CCPO. For those proposals which are subject to §6-129 of the New York City Administrative Code (M/WBE and EBE program), a minimum of twenty seven (27) days prior to the due date must be provided.

(ii) Publication. This subparagraph applies to RFPs above the small purchase limits except that it does not apply where vendors will be solicited from a PQL.

(A) Frequency. Notice of solicitation shall be published once in the City Record not less than twenty days before the proposal opening date with the exception of accelerated procurements, which shall appear not less than three business days before the proposal opening date.

(B) Content. Such notice must include:

((a)) agency name;

((b)) PIN;

((c)) title and/or brief description of the goods, services, or construction to be procured;

((d)) estimated quantity, if any;

((e) how the solicitation documents may be obtained;

((f)) date and time by which, and the place where, proposals shall be submitted and, for goods and standard services, where the identity of all proposers will be disclosed;

((g)) required vendor qualifications or eligibility requirements, if any; and

((h)) identification of the citywide bidders list used; and

((i)) the name and phone number of the agency contact person, including email address, if applicable.

(2) Notice of Vendor Selection.

(i) Frequency. Notice of vendor selection exceeding the small purchase limits shall be published once in the City Record within fifteen days after registration of the contract.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction to be procured;

(D) name and address of the vendor;

(E) dollar value of the contract; and

(F) procurement method by which the contract was let.

(e) Competitive Sealed Proposals from Prequalified Vendors List. Proposals may be solicited from vendors who have been previously prequalified. A determination to employ selective solicitation within a particular category of procurement shall be made by the ACCO and approved by the CCPO prior to issuing solicitations, unless the CCPO, upon adequate assurances of an agency's capacity to comply with the applicable procedural requirements, has determined that such approval is not required for an agency's contracts or particular categories of contracts.

(f) RFP Handling Procedures.

(1) Pre-Proposal or Pre-Solicitation Conferences. Pre-proposal or pre-solicitation conferences may be conducted in the manner set forth in Section 3-02 of these Rules.

(2) Amendments to RFPs. Amendments to RFPs may be made in the manner set forth in Section 3-02 of these Rules.

(3) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn prior to the established due date in the manner set forth in Section 3-02 of these Rules. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any, or if discussions have begun, it is the time and date by which best and final offers must be submitted.

(4) Late Proposals and Modifications. Any proposal or modification received after the established due date and time at the place designated for receipt is late and may be accepted only in the manner set forth in paragraphs (5) through (8) below.

(5) Handling and Acceptance of Late Proposals. A late proposal may only be accepted when it is determined by the ACCO that it is in the best interest of the City to do so. In such event, the ACCO may hold open the receipt of proposals by no more than three hours, during which time no other competing proposal may be opened. The ACCO may, upon written approval by the CCPO, hold open the receipt of proposals by longer than three hours, but until no later than the original submission time on the next business day; such approval may be given by the CCPO only where the need for holding the receipt of proposals open for a longer time arises from generally applicable emergency circumstances, such as weather or transit emergencies. An opened proposal shall eliminate the option of accepting any late proposal. Where an ACCO has determined that it is in the best interest of the City to accept a late proposal, any other late proposal received during the period of extension shall be similarly accepted.

(6) Documentation of Late Proposals. The ACCO shall, within one business day of such acceptance of late proposals, document the reasons that it is in the best interest of the City to approve the extension, the time extended, the name of any vendor(s) submitting a proposal received during the extension period established pursuant to paragraph (5) above, as well as an affirmative statement that no proposals were opened prior to the acceptance of the late proposal and that any other late proposal received during the period of extension was similarly accepted.

(7) Late Modifications. A late modification of a successful proposal that makes its terms more favorable to the City shall be considered at any time it is received and, if accepted by the ACCO, shall be so documented in the Recommendation for Award.

(8) Record. A record shall be made of each request for acceptance of a late proposal or modification. A late proposal or modification that is not accepted by the ACCO shall not be opened until after registration of the contract.

(9) Receipt and Registration of Proposals. The identify of an offeror shall not be disclosed prior to the established date and time for receipt of proposals. Proposals shall not be opened publicly but shall be opened in the presence of two or more City employees. Proposals and modifications shall be time and date-stamped upon receipt and held in a secure place until the established due date and time. The agency shall disclose the identity of all proposers for goods and standard services on the due date and time of the proposals. After the date and time established for the receipt of proposals, a Register of Proposals shall be prepared and shall be open to public inspection after award of a contract. It shall include for all proposals the name of each offeror and the number of modifications received, if any.

(g) Evaluation Process. Award, if any, must be made to the responsible proposer whose proposal represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP. In evaluating the proposals,

the agency may consider only price and the criteria set forth in the RFP. In considering price, the agency may use methods such as ranking technically viable proposals by price, evaluating price per technical point, or evaluating proposals in accordance with another combination of price and technical merit. Such methods may result in the agency selecting the highest technically rated proposer over another technically qualified proposer who offered a lower fee as a result of factors including, but not limited to, the selected vendor's superior technical skill and expertise, increased likelihood of timely completion, and/or ability to manage several projects simultaneously with lower overall costs to the City, including costs in City personnel time and consultants. However, for construction-related consulting services, including those procured through multiple award task orders, the agency shall rank proposers by technical merit, and then consider price by negotiating a fair and reasonable price with the highest technically ranked proposer(s). Other methods for considering price, including using fee curves based on market-derived data with appropriate consideration of complexity, or evaluating proposals in accordance with another combination of price and technical merit, may be used for construction-related consulting services only with the written approval of the CCPO.

(1) Evaluation Committee. Proposals shall be reviewed by an evaluation committee consisting of no fewer than three persons with knowledge, expertise, and experience sufficient to make a fair and reasonable evaluation. If an RFP incorporates multiple competitions, each competition may be evaluated by a separate committee. The ACCO shall require each member of the evaluation committee(s) to submit a signed statement, in a format approved by the CCPO, agreeing to prohibitions on any conflicts of interest.

(a) Randomized evaluation process. If the ACCO determines that such a high volume of competing proposals is likely to be received that it will be infeasible for each member of the evaluation committee to read each proposal, the ACCO may, subject to the approval of the CCPO, establish a pool of appropriate evaluators and then randomly assign each proposal to at least three such evaluators for review.

(b) Outside Evaluators. The evaluation committee may include persons who are not employed by the agency. In addition, the ACCO may determine, subject to the approval of the CCPO, that it in the best interests of the City for the evaluation committee to include persons who are not employees of the City of New York, provided however that such non-City employees may not constitute a majority of the evaluation committee. Such persons must serve without financial compensation, but may be entitled to travel and other related expenses as may be reasonably incurred in the execution of their role as an evaluator.

(2) Rating Sheets. Ratings sheets or other written evaluation forms shall be used to evaluate proposals by the evaluators and each evaluator shall sign and date his or her rating sheet. Initial ratings may be amended and the amended ratings recorded on amended ratings sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained.

(3) Proposal Discussions with Individual Offerors. The evaluation committee shall evaluate all proposals and may elect to enter into discussions with those whose proposals are acceptable or are reasonably likely to be made acceptable for any or all of the following purposes:

(i) promoting understanding of the City's requirements and the vendors' proposals and capabilities;

(ii) obtaining the best price for the City; or

(iii) arriving at a contract that will be most advantageous to the City taking into consideration price and the other evaluation factors set forth in the RFP.

(4) Conduct of Discussions.

(i) Proposers shall be accorded fair treatment with respect to any opportunity for discussions and revisions of proposals.

(ii) The ACCO shall establish an agenda and schedule for conducting discussions.

(iii) If there is a need for any substantial clarification of, or change in, the RFP, the RFP must be amended to incorporate such clarification or change and shall be provided to all proposers.

(iv) Auction techniques (revealing one proposer's price to another) and disclosure of any information derived from competing proposals are prohibited.

(v) Any oral clarification of a proposal shall be confirmed in writing by the proposer.

(5) Best and Final Offers. Best and final offers are the revised and corrected final proposals submitted by proposers after discussions, if any, have been held by the procuring agency.

(i) The ACCO shall establish a common date and time for the submission of best and final offers.

(ii) Best and final offers shall be submitted only once unless the ACCO makes a determination that it is in the City's best interest to conduct additional discussions and/or require another submission of best and final offers.

(iii) Proposers shall be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(iv) All best and final offers shall be recorded on the Register of Proposals and handled in accordance with the control procedures contained in these Rules.

(v) The ACCO may request best and final offers on the whole proposal or on any one or combination of its component parts (e.g., price, technical qualifications, approach, and/or capability). The request shall be the same for all proposers.

(vi) Best and final offers shall be evaluated in accordance with this subdivision.

(vii) For construction-related consulting services, in the event that the agency has chosen to negotiate a fair and reasonable price with the top-ranked proposer, if such a fee is not successfully negotiated, the agency may conclude such negotiations, and enter into negotiations with the next ranked vendor(s), as necessary.

(6) Contract proposals from certified M/WBEs for purchase of goods and standard services. Proposals submitted by certified M/WBEs in a group for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code must, except with the permission of the CCPO, be provided one of following quantitative preferences, as determined by the ACCO:

(i) Ten percent (10%) of the total technical points; or

(ii) If such proposal's score was above a minimum threshold for quality on the weighted criteria as established in the solicitation, either a price preference of ten percent (10%) or a point preference of ten percent (10%) of the total technical points in the evaluation of its proposal, as to be determined by the ACCO.

(h) Construction-Related Services.

(1) There are two categories of construction-related services that an agency may procure: Non-Complex and Complex.

(2) Where applicable for the procurement of Non-Complex and Complex construction-related services, the following alternative source selection procedures may be utilized.

(i) Non-Complex Construction-Related Services. Prior to utilizing either of the two alternative source selection procedures described in this subparagraph, the ACCO must determine what constitutes for the agency Non-Complex construction-related services and submit this definition to the CCPO for approval. The ACCO must additionally provide the basis for a determination that the particular service being procured conforms to the agency's CCPO approved definition of a Non-Complex construction-

related service. The approved CCPO definition and the basis for the determination that the particular service conforms to that definition shall be included in the agency contract file.

(A) Alternative #1. To procure a particular Non-Complex construction-related service, the agency prepares a scope of services, randomly selects a vendor from the appropriate PQL, and offers the project to the selected vendor based upon an applicable, updated OMB fee-curve scale or an appropriate fee-curve scale developed by the agency and approved by OMB. A vendor will have at least seven days to accept or reject the project.

(B) Alternative #2. The agency prepares an RFP and solicits technical and cost proposals from a minimum of three vendors selected randomly and/or rotationally from the appropriate PQL. The selected vendors will have at least fifteen days to respond. The agency will evaluate the submitted proposals and enter into negotiations with the vendor(s) offering the best combination of technical quality and price.

(ii) Complex Construction-Related Services. The agency prepares an RFP and solicits technical and cost proposals from vendors selected randomly, rotationally, and/or based on a determination that a vendor(s) is the best qualified from the appropriate PQL. Where only random and/or rotational selection is utilized, a minimum of three vendors shall be selected; where selection based on a best qualified determination is utilized, either alone or in combination with random and/or rotational selection, a minimum of five vendors shall be selected. The selected vendors will have at least twenty days to respond. The agency will evaluate the submitted proposals and enter into negotiations with the vendor(s) offering the best combination of technical quality and price.

(i) Mistakes in Proposals.

(1) Confirmation of Proposal. When the ACCO knows or has reason to conclude before award that a mistake has been made, he or she should request the proposer to confirm the proposal. If the proposer alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in this subdivision are met.

(2) Mistakes Discovered After Receipt of Proposals but Before Vendor Selection.

(i) During Discussions Prior to Best and Final Offers. Once discussions are commenced with any proposer or after best and final offers are requested, any offeror may correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(ii) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror, shall be treated in accordance with Section 3-02(m)(3)(i) of these Rules.

(iii) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only in accordance with Section 3-02(m)(3)(ii) of these Rules.

(3) Mistakes Discovered After Vendor Selection. Mistakes shall not be corrected after vendor selection except in accordance with Section 3-02(m)(4) of these Rules.

(4) Determinations Required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a determination shall be prepared in accordance with Section 3-02(m)(5) of these Rules.

(j) Multiple Award Task Order Contracts.

(1) Determination. Multiple award task order contracts for services may be awarded upon a determination by the ACCO that it is in the best interest of the City to award multiple contracts for services to multiple contractors and to allocate work among such contractors through a task order system. If an agency intends such contracts to be available for use by other City agencies, the provisions of Section 3-14 (Contracts for Services) shall also apply. The criteria to be considered by the ACCO in making such determination may include the following: the nature of the services to be procured; the expected frequency of task order issuance; the capacity of vendors to provide all of the required services within the required timeframes; and the potential advantage of multiple contracts (e.g., more favorable terms; more competitive pricing, etc.).

(2) Method.

(i) Multiple awards may be made for contracts for goods or services, pursuant to requests for proposals, in conjunction with the procedures prescribed in this subdivision. Such request for proposals, and the subsequent contracts, shall state the procedures and criteria to be used in selecting the vendor to perform on an individual task order for services or purchase order for goods.

(A) For services other than standard services, such procedures and criteria shall provide that each vendor shall receive each solicitation and have a reasonable opportunity to compete to provide the services, unless an alternative method of assigning task orders, as set forth below, is determined by the CCPO to be in the City's best interest and is set forth in the request for proposals and the contract. In the event that such alternative method is used, each

selected vendor shall receive notice of assignment of each task order, regardless of whether each selected vendor received the solicitation for the task order.

(B) For goods and standard services, the agency may:

((a)) select the vendor that represents the best value to the City for that particular task order or purchase order, based on each vendor's contract, or,

((b)) solicit offers for each task order or purchase order from all awarded vendors. If the agency solicits offers for each task order or purchase order, each vendor shall receive each solicitation and have a reasonable opportunity to compete to provide the standard services or goods.

The agency may set forth an alternative method of assigning task orders or purchase orders if it is determined by the CCPO to be in the City's best interest and is set forth in the request for proposals and the contract. In the event that such alternative method is used for standard services, each vendor with a contract shall receive notice of assignment of each task order at the time each task order is issued, regardless of whether each vendor with a contract received the solicitation for the task order.

(ii) The following list constitutes acceptable alternative methods of assigning task orders:

(A) rotation, or other non-discretionary method of assignment, including where assignment pursuant to such method may be varied based on stated criteria (e.g., capacity or past performance);

(B) assignment to or competition among particular vendor(s) with technical expertise particularly suited to the task order;

(C) assignment to a particular vendor based on a vendor's particular geographic location, experience or knowledge;

(D) assignment to a particular vendor based on the agency's need to distribute task orders among vendors; and

(E) Any other method approved by the CCPO as set forth in the RFP.

(iii) In the event that a vendor selected pursuant to one of the selection methods in paragraphs (i) or (ii) above is unable to perform the services on an individual task order or provide the goods to be purchased pursuant to

an individual purchase order for reasons such as lack of capacity or conflict of interest, the agency may disqualify that vendor for purposes of that task order and select another vendor with approval of the CCPO.

(iv) Each vendor shall be required to respond to every solicitation for an individual task order or purchase order for which it is solicited. The ACCO may determine that a vendor is in default if it fails to bid without an adequate explanation for such failure.

(v) Price shall be among the criteria considered in making individual vendor selection decisions, and no task order shall be issued unless the ACCO determines that the proposed price is fair and reasonable. Prices set forth in a multiple award contract shall represent maximum prices that may be set forth in individual task orders issued to that vendor.

(3) Duration. Unless otherwise approved by the CCPO, contracts awarded pursuant to this section shall have an initial term, or a total term including all renewals, of not more than three years. Task orders or purchase orders may extend beyond the expiration of the contract term, in which event the terms and conditions of the contract shall continue to apply to the task order until its termination or expiration. Task orders or purchase orders shall have a maximum term of three years or, if issued for a specific project, until the specific project is completed. Notwithstanding the above, a task order or purchase order may be extended beyond or further extended beyond the expiration of the contract term, or beyond the expiration of the task order or purchase order, with approval by the CCPO.

(k) Vendor Selection and Documentation. The ACCO shall make a determination showing the basis on which the contract award was made to the responsible proposer whose proposal was determined to represent the best value to the City and therefore to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP. This determination shall be included in a Recommendation of Award. Each Recommendation for Award shall include at a minimum the following information:

(1) justification of the award;

(2) if the award is for goods, services, or construction for which there is agency price history, a price comparison of the proposed price versus previous price, if applicable, with the rationale for any increases supported by cost/price analysis data;

(3) reasons for multiple award, and multiple award task order contracts;

(4) any special terms and conditions included in the proposed contract via the use of cost/price analysis techniques;

(5) affirmative finding of responsibility for the selected proposer(s); and

(6) efforts to negotiate better value.

Upon determination of the most favorable proposal and after obtaining all required approvals, the Contracting Officer shall award the contract to that proposer.

Section 3-04 NEGOTIATED ACQUISITION.

(a) Policy. Negotiated acquisition may be used for all categories of procurement under the circumstances and subject to the conditions set forth in this section. Authority for approvals or determinations required by this section shall not be delegated, unless otherwise stated herein.

(b) Procedures.

(1) Preliminary Discussions. An agency may engage in preliminary discussions with a vendor to explore the feasibility of a proposed negotiated acquisition. Discussions are not negotiations for the selection of a vendor.

(2) The ACCO shall justify the use of the negotiated acquisition method by making a determination that it is not practicable and/or advantageous to award a contract by competitive sealed bidding or competitive sealed proposals due to one or more of the following circumstances and the basis thereof:

(i) there is a time-sensitive situation where a vendor must be retained quickly because:

(A) an agency needs to respond to a court order, stipulation, or consent decree;

(B) funds available from a source outside the City will be lost to the City;

(C) an existing vendor has been terminated, has defaulted, has withdrawn from, or has repudiated a contract, or has become otherwise unavailable, or an agency has decided not to renew or extend an existing contract in the best interest of the City and the agency requires a substitute or successor vendor; or

(D) a compelling need for goods, services, construction, and/or construction-related services exists that cannot be timely met through competitive sealed bidding or competitive sealed proposals;

(ii) there is a limited number of vendors available and able to perform the work;

(iii) there is a compelling need to extend a contract one or more times beyond the now-permissible cumulative twelve-month limit, provided that the vendor's performance is satisfactory or that any deficiencies have been or are addressed or are effectively addressed through a corrective action plan, and the extension(s) is for the minimum time necessary to meet the need;

(iv) there is a need to procure legal services or consulting services in support of current or anticipated litigation, investigative or confidential services:

(A) in the case of legal services or consulting services in support of current or anticipated litigation, unless otherwise provided by law, the Corporation Counsel or designee shall make this determination;

(B) in the case of investigative or confidential services, the Mayor or designee, the Corporation Counsel, or the Commissioner of DOI, whichever is applicable, shall make this determination;

(v) there is a need to procure construction-related services for a later phase of an ongoing complex construction project from the same vendor where it is not practicable to define the full scope of work at the beginning of the project, the original solicitation included notice that the selected vendor may be the only vendor eligible for later phases of the project, there are compelling programmatic reasons to use the same vendor for the successive phases, and the vendor's performance is satisfactory;

(vi) there is a need to procure changed or additional work on an ongoing construction project when an agency wishes to retain a new vendor because it is not practicable or advantageous to award such work by change order or modification to the original vendor;

(vii) there is a need to procure construction when, during an ongoing construction project, there is a compelling necessity to perform additional work, which constitutes a material change of scope, and the advantages of negotiating with either an existing vendor or a limited number of other vendors clearly outweigh the disadvantages of a lack of competition; or

(viii) there is a need to procure investment services, as described herein.

(3) The CCPO shall approve the use of the negotiated acquisition method for a particular procurement or for a particular type of procurement prior to the solicitation of vendors.

(4) The agency shall negotiate with all qualified vendors that have expressed interest unless the ACCO determines for a particular procurement or for a

particular type of procurement that it is in the City's best interest to negotiate with fewer vendors, and the CCPO approves such determination.

(5) The ACCO or designee shall maintain a written record of the conduct of negotiations and the basis for every determination to continue or suspend negotiations with each vendor.

(6) The ACCO shall make a determination that award of the contract is in the best interest of the City and the basis thereof.

(7) Subparagraph (2)(iii) shall not apply to construction.

(c) Investment Services. Negotiated acquisition may be used for one or more City 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") 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 the relevant asset class investment consultant(s) 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) 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) 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;

(5) the term of the new contract must 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;

(6) over the immediately preceding market cycle of at least three (3) years, the manager or submanager has 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;

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

(8) no contract procured pursuant to this provision may be executed without the approval of the 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, which must include such information as necessary to establish that the manager or submanager meets the conditions for being awarded a contract under this section and provides fair and reasonable fees.

(d) Public Notice. This subdivision shall not apply to negotiated acquisition below the small purchase limits or where the Corporation Counsel or designee has made a determination that such notice may disclose litigation strategy or otherwise impair the conduct of litigation by the City.

(1) Notice of Intent to Enter into Negotiations. This paragraph shall not apply where negotiations will be entered into with vendors solicited solely from a PQL or where time constraints beyond the agency's control make such advance notice impractical.

(i) Frequency. Notice of intent to enter into negotiations shall be published in the City Record for five consecutive editions and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. The last date of publications of such notice shall appear no fewer than ten days before negotiations are expected to begin.

(ii) Content. Such notice of intent shall include:

(A) agency name;

(B) PIN;

(C) purchase description;

(D) estimated quantity, if any;

(E) name(s) of the proposed vendor(s), if applicable;

(F) summary of the basis of the determination to use negotiated acquisition;

(G) projected contract start and expiration dates; and

(H) how vendors may express interest in the instant procurement or in such procurement in the future, as applicable.

(2) Notice of Award.

(i) Frequency. Notice of contract award shall be published at least once in the City Record within fifteen days after registration of the contract.

(ii) Content. Such notice of award shall include:

(A) agency name;

(B) PIN;

(C) purchase description;

(D) name and address of the vendor;

(E) dollar value of the contract;

(F) date of the published notice of intent to enter into negotiation, if applicable; and

(G) contract start and expiration dates.

Section 3-05 SOLE SOURCE PROCUREMENT.

(a) Conditions for Use. Sole source procurement shall be used only when there is only one source for the required good, service, or construction. In such case, the accepted price and terms and conditions shall be achieved through negotiation between the agency and the vendor. This section shall apply to all sole source procurements over $20,000.

(b) Determination. Prior to entering into sole source negotiations, the ACCO shall make a determination that there is only one source for the required good, service, or construction.

(1) Such determination shall include a description of the process by which the agency made such determination, a description of the efforts made to ensure that offers were solicited from other sources, and where applicable, a statement of intended actions to develop competition in the future. The agency shall also perform a presolicitation review pursuant to Section 2-02.

(2) A copy of the determination shall be forwarded within five days of completion to the Comptroller.

(c) Public Notice.

(1) Notice of Intent to Enter into Sole Source Negotiations. If expressions of interest are received they shall be evaluated and, if it appears that the good, service, or construction is available from more than a single source, a solicitation shall be issued in accordance with Chapter 3 of these Rules.

(i) Frequency. After the ACCO determines that this procurement method will be used, notice of the intent to enter into negotiations shall be published in the City Record for five (5) consecutive editions no fewer than ten calendar days before negotiations are expected to begin and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. Such notice shall solicit expressions of interest from vendors qualified to compete on that procurement or in the future. This subdivision shall not apply in cases where Corporation Counsel has provided a written statement that such notice may jeopardize pending litigation or collective bargaining.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction procured;

(D) estimated quantity, if any;

(E) name of the proposed vendor;

(F) summary of the determination;

(G) how qualified vendors may obtain an application, or express their interest in providing such goods, service, or construction; and

(H) due date.

(2) Notice of Award.

(i) Frequency. Notice of a contract award exceeding the small purchase limits shall be published at least once in the City Record, within fifteen calendar days after registration of the contract.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction procured;

(D) name and address of the vendor;

(E) dollar value of the contract;

(F) the date of the published notice of intent to enter sole source negotiations; and

(G) summary determination of the basis for the sole source procurement.

(d) Approvals. The award of any sole source contracts shall be approved by the Agency Head or the ACCO or other designated senior official. This authority shall not be further delegated.

Section 3-06 EMERGENCY PURCHASES.

(a) Definition of Emergency Conditions. An emergency condition is an unforeseen danger to life, safety, property, or a necessary service. The existence of such a condition creates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods.

(b) Scope. An emergency procurement shall be limited to the procurement of those items necessary to avoid or mitigate serious danger to life, safety, property, or a necessary service.

(c) Authority to Make Emergency Purchases.

(1) Any agency may make an emergency procurement when an emergency arises and the agency's resulting need cannot be met through normal procurement methods.

(2) The Agency shall obtain the prior approval of the Comptroller and the Corporation Counsel.

(3) The Agency shall submit at the earliest practicable time a determination of the basis of the emergency and the selection of the contractor, as set forth in

Section 3-06(e)(3) of these Rules to the Comptroller and the Corporation Counsel for approval as soon as possible.

(d) Source Selection. The procedure used shall assure that the required items are procured in time to meet the emergency. Given this constraint, such competition as is possible and practicable shall be obtained.

(e) Public Notice and Filing Requirements. Solicitations in emergency procurements are subject to the following public notice and reporting requirements:

(1) Solicitations pursuant to a finding of emergency are not required to be published in the City Record.

(2) The agency shall publish notice of the award of the emergency contract in accordance with Section 3-06(f).

(3) A determination of the basis for the emergency and the selection of the vendor must be filed with the Corporation Counsel and the Comptroller, and must further be submitted to the City Council no later than fifteen days following the contract award. The determination must include:

(i) the date emergency first became known;

(ii) a list of goods, services, and construction procured;

(iii) the names of all vendors solicited;

(iv) the basis of vendor selection;

(v) contract prices;

(vi) the past performance history of the selected vendor;

(vii) a listing of prior/related emergency contract; and

(viii) PIN.

(f) Notice of Award.

(1) Frequency. Notice of a contract award exceeding the small purchase limits shall be published at least once in the City Record, within fifteen calendar days after contract registration.

(2) Content. Such notice shall include:

(i) summary determination of the basis for the emergency stated to be

either a case of an unforeseen danger to life, safety, property, or a necessary service;

(ii) agency name;

(iii) PIN;

(iv) title and/or brief description of the goods, services, or construction procured;

(v) name and address of the vendor;

(vi) dollar value of the contract;

(vii) procurement method by which the contract was let; and

(viii) citation of the reason under Section 315 of the City Charter providing justification for the chosen method of procurement.

Section 3-07 ACCELERATED PROCUREMENT.

(a) Definition. An accelerated procurement is a procurement of commodities that is required to be made quickly due to markets experiencing significant shortages and/or short-term price fluctuations. Such markets must be identified by specific rule of the PPB. Accelerated procurement shall only be authorized when the CCPO determines those specific commodities subject to accelerated procurement.

(b) Eligible Markets. The PPB has identified the following specific markets as experiencing significant shortages and/or short-term price fluctuations:

(1) chemicals;

(2) energy;

(3) food;

(4) metals (ferrous and non-ferrous);

(5) paper; and

(6) plastics.

(c) Designation of Specific Commodities within Eligible Markets. The CCPO, based upon written application by an ACCO, shall select those specific commodities within

eligible markets subject to accelerated procurement. The CCPO may also, at his/her discretion, select specific commodities for accelerated procurements. In either case, the selected commodities shall have been and continue to be in short supply and/or have experienced and continue to experience short-term price fluctuations. The CCPO shall document the reasons why such specific commodities are selected and the duration and conditions under which these commodities shall remain subject to accelerated procurement. The CCPO shall further issue the approvals necessary to implement any changes to the specific commodities list and shall publish quarterly in the City Record a list of all commodities designated for accelerated procurement. The scheduling and content of such notice shall be determined by the CCPO.

(d) Methods of Procurement. Accelerated procurements shall be made in accordance with section 3-01 of these Rules.

(e) Exemptions from Certain Requirements. Accelerated procurements are exempt from the following requirements:

(1) an accelerated procurement in excess of the small purchase limit may be made by purchase order instead of contract;

(2) an accelerated procurement is exempt from the hearing requirements of these Rules; and

(3) registration of the contract pursuant to these Rules prior to the effective date is not required. The agency shall, as soon as is practicable, and not more than thirty days from date of award, submit such procurement to the Comptroller with a completed Advice of Award and all other documentation required by these Rules for an audit of the procedures and basis for the determination of the accelerated procurement.

(f) Authority to Make Accelerated Procurements. Accelerated procurements may be made provided it is an eligible market and the CCPO has approved the specific commodity for accelerated procurement.

(g) Filing Requirements. The determination of the basis for the procurement, all required approvals, and the selection of the vendor shall be documented in the Recommendation for Award This documentation shall include:

(1) a list of the commodities procured, together with the PIN;

(2) the names of all vendors solicited and the name and basis of the source selection;

(3) the prices paid and the percentage difference between the prices paid under the accelerated procurement as compared with the previous purchase for the same or similar commodity; and

(4) an evaluation of the past performance (if any) of the selected source.

(h) Public Notice.

(1) Notice of Solicitation.

(i) Frequency. Notice shall be published at least once in the City Record not less than three business days before the bid opening date, the proposal due date, or initiation of negotiations with a vendor pursuant to the sole source or negotiated acquisition methods, or the initiation of another procurement method provided by these Rules and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the commodities to be procured;

(D) estimated quantity, if any;

(E) how the contract documents may be obtained, if any applicable;

(F) when and where the bids are due and shall be publicly opened, or when and where proposals are due, if applicable; and

(G) special legally-required vendor qualifications or eligibility requirements, if any.

(2) Notice of Award.

(i) Frequency. Notice of a contract award exceeding the small purchase limits shall be published at least once in the City Record, within fifteen days after registration of the contract.

(ii) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the commodities procured;

(D) name and address of the vendor;

(E) dollar value of the contract;

(F) procurement method by which the contract was let, including summary of any "special case" determination made in connection with the award by a "special case" method of procurement, if applicable; and

(G) summary determination of the basis for the accelerated procurement.

Section 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 of goods and all services except construction the value of which is $20,000 or less, and for procurements of construction the value of which is $35,000 or less, no competition is required except that in making purchases below this limit, Contracting Officers must ensure that the noncompetitive price is reasonable and that purchases are distributed appropriately among responsible vendors, including M/WBE vendors. Documentation of such purchases must identify the vendor the item was purchased from, the item purchased, and the amount paid.

(iii) Small Purchases. For procurements of goods and all services except construction valued over $20,000 or procurements of construction valued over $35,000 through the small purchase limits, at least five vendors must

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 must 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 must 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.

For small purchases of particular goods and all services except construction valued at more than $20,000 and small purchases of construction valued at more than $35,000, agencies must use a written solicitation describing the requirements, which must contain, at a minimum:

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

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

(iii) basis for award; and

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

(d) Award. Small purchases for goods and all services except construction valued at over $20,000 or small purchases for construction valued at over $35,000 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 must issue a purchase order or contract, as appropriate, to the successful bidder or offeror.

(e) Record. The procurement file for a small purchase shall include, at a minimum:

(1) name of the responsible Contracting Officer;

(2) date of contract award;

(3) purchase order or contract number;

(4) name and address of successful vendor, including PIN;

(5) invoice and receiving documentation;

(6) description of goods, services, construction, and construction-related services;

(7) name of the bidder list or applicable commodity code;

(8) names of solicited vendors and bid amounts, if any;

(9) copy of advertisement or written solicitation (if applicable);

(10) quotations and notations pertaining to oral bid solicitations (if applicable);

(11) written bids and offers (if applicable);

(12) all correspondence;

(13) bid tabulations; and

(14) written basis of award.

Section 3-09 INTERGOVERNMENTAL AND COOPERATIVE PURCHASES.

(a) Intergovernmental Purchasing. An agency may procure goods, services, construction, or construction-related services through the United States General Services Administration or any other federal agency or the New York State Office of General Services or any other State agency provided that: for goods the price is lower than the prevailing market price; for services or construction, the price is fair and reasonable; and for procurements above the small purchase limits, approval has been obtained from the ACCO.

(b) Cooperative Purchasing.

(1) Cooperative purchasing means procurement conducted by, or on behalf of, more than one public agency or governmental entity.

(2) Any City agency may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of goods, services, or construction with one or more public agencies or governmental entities.

(3) A cooperative purchase may be made when the ACCO determines, with CCPO approval, that such purchase is consistent with general New York City procurement policy, and is in the City's best interest and the basis thereof. If a cooperative purchase is conducted through other than a competitive sealed bid or proposal process, such determination shall provide the basis for the determination that the purchase is consistent with general New York City procurement policy.

(c) Responsibility Determination. Prior to making an intergovernmental or cooperative purchase, an agency shall make an affirmative finding of responsibility and may require from the vendor the submission of a VENDEX Questionnaire.

(d) Public Notice of Award.

(1) Frequency. Notice of Award of a contract or issuance of a purchase order exceeding the small purchase limits shall be published at least once in the City Record within fifteen days after registration of the contract or placement of the purchase order.

(2) Content. Such notice shall include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction procured;

(D) name and address of the vendor;

(E) dollar value of the contract; and

(F) how the vendor may express interest in such type of procurement in the future.

(e) Record. Records shall include at a minimum:

(1) the determination that for goods the price is lower than the prevailing market price; for services or construction that the price is fair and reasonable; and including an explanation of how such determination was made;

(2) the ACCO's approval, if applicable;

(3) the list of goods, services, or construction procured;

(4) the name and address of the vendor;

(5) the date and the amount of the purchase order or contract;

(6) a copy of the purchase order or contract;

(7) invoice and receiving documentation if the procuring agency also receives the goods and the invoice; and

(8) a copy of City Record notice, if applicable.

Section 3-10 PREQUALIFICATION.

(a) Policy. Prequalification allows an agency to evaluate the qualifications of vendors for provision of particular categories of goods, services, construction, or construction-related services (including subcategories based on expertise, size, dollar size of project, or other factors as determined by the ACCO) before issuing a solicitation for a specific contract. Except for procurements for construction, a procurement using a PQL shall be considered a "special case" under these Rules. This Section does not apply to the prequalification of vendors through HHS Accelerator pursuant to Section 3-16.

(b) "Special Case" Determination. Prior to using a PQL for a procurement of goods, services or construction-related services, the ACCO shall make a determination that such procurement is a "special case" that requires the use of a PQL, that the list is composed of vendors that have been prequalified to provide the specified item(s) to be procured, and that the particular PQL is accurate, complete, and current. The ACCO may permit joint ventures of two or more prequalified vendors from one or more PQLs, or may combine PQLs for a solicitation. Use of a PQL for a procurement of construction does not require a special case determination.

(c) Circumstances of Use. Prequalification shall be used only where the need for advance screening of vendors' qualifications outweighs the benefits of broader competition, as determined by the ACCO. Such circumstances include, but are not limited to, categories of procurement where:

(1) it is essential that only highly competent and experienced vendors be invited to bid;

(2) high volume and/or repetitive procurements necessitate reduction of paperwork and delays in the award of contracts;

(3) the time between the occurrence of the need and the award of the contract must often be reduced to avert or respond to an emergency; or

(4) with respect to procurement of construction, any basis that is in the best interests of the City.

(d) Criteria. Criteria that may be used to prequalify vendors include, but are not limited to:

(1) current and past experience with similar projects;

(2) references, past performance, and reliability;

(3) organization, staffing (both members of staff and particular abilities and experience), and ability to undertake the type and complexity of work;

(4) financial capability, responsibility and reliability for such type and complexity of work, and availability of appropriate resources;

(5) record of compliance with all federal, State, and local laws, rules, licensing requirements, where applicable, and executive orders, including but not limited to compliance with existing labor standards;

(6) record of maintaining harmonious labor relations;

(7) use of subcontractors;

(8) compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with minority and women-owned businesses through joint ventures or subcontractor relationships;

(9) record of protecting the health and safety of workers on public works projects and job sites as demonstrated by the vendor's experience modification rate for each of the last three years; and

(10) record of business integrity of vendor.

In developing a PQL for a procurement of goods, services or construction-related services, the agency may use any of the criteria listed in this subsection. In developing a PQL for a procurement of construction, the agency must use all of the criteria listed in this subsection.

(e) Public Notice.

(1) Frequency.

(i) For each category of procurement for which an agency maintains a PQL or intends to establish a new PQL, the ACCO shall publish in the City Record at least once annually for five consecutive editions and shall post on the City's website in a location that is accessible by the public simultaneously with its publication a notice or notices specifically identifying each such category and inviting vendors to apply for inclusion on such PQL. Application for inclusion on such PQL shall be continuously available.

(ii) For each procurement not falling within a category for which a PQL has been established, but for which the agency intends to prequalify vendors prior to issuing a solicitation for such procurement, the ACCO shall publish in the City Record for five consecutive editions and shall post on the City's website in a location that is accessible by the public simultaneously with its publication a notice of its intention to establish such a PQL and invite vendors to apply for inclusion. There shall be a cutoff date for receipt of prequalification questionnaires for such PQL.

(iii) When using a PQL for a procurement, publication of notice inviting vendors to apply for such PQL shall have occurred within one year prior to the issuance of the solicitation.

(iv) The CCPO shall cause to be published in the City Record and shall post on the City's website in a location that is accessible by the public simultaneously with its publication a prominently placed continuous notice stating that New York City procurement policy encourages agencies to develop a PQL for various categories of goods, services, construction and construction-related services. Information and applications to be included on such PQLs may be obtained from the ACCO at each agency, may be submitted to ACCOs at any time, and shall be approved or denied within ninety days from the date of submission.

(v) For any PQL for construction, in addition to the notices required by this subsection, the ACCO shall publish, not less than annually, an advertisement in a New York City newspaper of general circulation inviting vendors to apply for inclusion on such PQL.

(2) Content. The notice shall include the agency name, category of procurement, and information on how the vendor may obtain an application.

(3) Updated PQLs. When using a PQL for a procurement, publication of notice soliciting vendors for such list shall have occurred within one year of the solicitation.

(f) Questionnaire. To apply for inclusion on a PQL, a vendor must complete and submit an agency-developed prequalification questionnaire. At least once every two years, and at the time of submitting any bid or proposal in response to a solicitation from a PQL, vendors shall affirm that there has been no change in the information included in the prequalification questionnaire, or shall supply such changed information. With respect to any PQL used in connection with contract awards pursuant to Section 1-02(e) of these Rules, such affirmation by vendors that there has been no change in the information included in the prequalification questionnaire (or the supplying of such changed information) shall occur at the time of contract award.

(g) Making the Prequalification Decision. Prequalification questionnaires shall be reviewed by the ACCO and other agency personnel with knowledge, expertise, and experience sufficient to make a fair and reasonable determination, as appropriate. The ACCO shall have ninety days from the date of submission of a properly completed prequalification questionnaire to approve or deny prequalification.

(h) Solicitation from a PQL.

(1) Where a PQL has been established for a category of procurement or a particular procurement, the solicitation of bids or proposals for such procurement or category is not required to be publicly advertised, but may be limited to vendors on the PQL. PQLs for construction must have no less than five vendors

and shall remain open for all additional qualified vendors. Where a PQL has been established for a category of construction procurement or a particular construction procurement, the solicitation of bids for such procurement or within such category must be limited to vendors on the PQL.

(2) Prequalified lists shall be reviewed at least once every two years to ensure that firms that no longer meet prequalification standards are not retained on the list.

(i) Selective Solicitation from a PQL.

(1) Definition and Policy. Selective solicitation is the solicitation of bids or proposals from fewer than all the vendors on a PQL. This method may be used where time is of the essence or the benefits of additional competition are outweighed by the administrative cost of soliciting more than a minimum number of bids. A determination to utilize selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the ACCO and approved by the CCPO, unless the CCPO, upon adequate assurances of an agency's capacity to comply with the applicable procedural requirements, has determined that such approval is not required for an agency's contracts or particular categories of contracts.

(2) Methods of Selective Solicitation.

(i) Minimum Requirement. When selective solicitation is used, it is essential that a minimum level of competition be sought.

(ii) Random Selective Solicitation. Except as otherwise permitted by §§3-03(h) and 3-04(b) of these Rules, bids or proposals shall be solicited from a minimum of eight vendors, selected at random from the PQL.

(iii) Rotational Selective Solicitation. Rotational selective solicitation is permitted for construction and construction-related services pursuant to §3-03(h)of these Rules.

(iv) Selective Solicitation Based on a Determination that a Vendor(s) is the Best Qualified. In the case of construction or construction-related services where selective solicitation based on a determination that a vendor(s) is the best qualified pursuant to §3-03(h) and §3-04(b) of these Rules will be utilized, the evaluation committee established pursuant to §3-03(g) of these Rules or a separate committee, composed of no fewer than three persons with knowledge, expertise, and experience to make a fair and reasonable evaluation of the vendors, shall select a minimum of five vendors evaluated as being the best qualified for the construction or construction-related service. The committee shall make a determination of the basis for selecting each vendor.

(v) Selective Solicitation and Multiple Awards. Where the solicitation will result in the award of multiple contracts, the minimum number of vendors solicited shall be proportional to the number of anticipated awards (e.g., where two contracts are to be awarded, the agency must select a minimum of sixteen vendors, except that in the case of construction- related services to be procured pursuant to §3-03(h)(2)(i)(B) of these Rules, the agency must only select a minimum of six vendors; in the case of construction-related services to be procured pursuant to §3-03(h)(2)(ii) of these Rules where selection based on a "best qualified" determination is utilized, either alone or in combination with random and/or rotational selective solicitation, the agency must only select a minimum of ten vendors).

(j) Prequalification Not a Finding of Responsibility. The fact that a vendor has been prequalified does not in and of itself represent a finding of responsibility for a particular procurement. Between the time of bid opening or receipt of proposals and contract award, the ACCO may determine that a prequalified vendor is not responsible and, as such, should be removed from the PQL.

(k) PQL of Auditors. A PQL of auditors shall be maintained by the Comptroller in accordance with this section. An agency seeking to award an audit contract shall solicit only those vendors that have been prequalified by the Comptroller.

(l) Denial or Revocation of Prequalification.

(1) Any vendor whose qualifications fail to meet the criteria established by the ACCO shall be denied prequalification. The prequalified status of a vendor may be revoked on the basis of changed circumstance, conditions, or status of the vendor or its staff, or additional information acquired by the agency, or further analysis of the information upon which the original prequalification determination was made where the new information or further analysis indicates that the vendor does not meet the established criteria for prequalification.

(2) The ACCO shall notify the vendor in writing of a denial or revocation of prequalification, stating the reasons upon which the determination is based and informing the vendor of the right to appeal. The notification shall also include the following statement:

> The vendor shall send a copy of its appeal to the New York City Comptroller, for informational purposes, at the Office of the New York City Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, NY 10007, (212) 669-2323.

A copy of the ACCO's determination shall also be sent to the CCPO for inclusion in the VENDEX database and to the Comptroller's Office.

(3) A prequalified vendor that fails to respond to three consecutive solicitations shall be deemed to have withdrawn from the PQL. For purposes of this subdivision, a response of "no bid" or "no proposal" shall be considered a response to a solicitation. No appeal shall be considered from a deemed withdrawal from a PQL, but a vendor who has been so removed may apply for reinstatement by submitting a new prequalification questionnaire.

(m) Appeal of Denial or Revocation of Prequalification.

(1) Time Limit. A vendor shall have fifteen days from receipt of the determination to file a written appeal of that determination with the Agency Head. Receipt of notice by the vendor shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Agency Head.

(2) Form and Content. The appeal shall be in writing and shall briefly state all the facts or other basis upon which the vendor contests the agency determination. Supporting documentation, if any, shall be included.

(3) Determination. The Agency Head shall consider the appeal, and shall make a prompt written decision with respect to its merits, except when such appeal relates to a DLS determination of non-compliance with equal employment opportunity requirements. Under such exception, the head of DLS shall consider the appeal and shall promptly inform the Agency Head in writing of his/her determination on the merits. The Agency Head or head of DLS (as applicable) may in his/her sole discretion convene an informal conference with the vendor and the ACCO to resolve the issue by mutual consent prior to making a determination. The Agency Head shall determine whether the ACCO's decision is arbitrary and capricious and whether it is based on substantial evidence.

(4) Notification. A copy of the decision of the Agency Head or the head of DLS shall be sent to the vendor, stating the reasons upon which the decision is based and informing the vendor of the right to appeal. A copy of such determination shall be sent to the CCPO for any modification to the VENDEX database and to the Comptroller's Office.

(5) Appeal to OATH. The decision of the Agency Head or the head of DLS shall be final unless appealed to OATH. If a vendor wishes to contest the Agency Head/head of DLS decision, it may appeal to OATH, which shall hear and take final action in the matter in accordance with its rules. The petition to OATH shall be filed by the vendor within fifteen days of the date of the decision. Supporting documentation, if any, shall be included. The vendor shall, at the same time, send a copy of its appeal to the Agency Head, CCPO, and Comptroller's Office.

The agency shall forward a copy of all appeal-related documents within fourteen days of its receipt of the copy of the vendor's appeal to OATH. OATH shall review the decision and determine whether that decision is arbitrary or capricious and whether it is based on substantial

evidence. Copies of OATH's determination shall be sent to the vendor, Agency Head, Comptroller's Office, and, where the decision results in the revocation of prequalification, to the CCPO for any modifications to the VENDEX database.

Section 3-11 DEMONSTRATION PROJECTS FOR INNOVATIVE PRODUCTS, APPROACHES, OR TECHNOLOGIES.

(a) Policy and Purpose. It is in the City's best interest to consider proposals for demonstration projects. A demonstration project is a short-term, carefully planned, pilot exercise designed to test and evaluate the feasibility and application of an innovative product, approach or technology not currently used by the City. Demonstration projects may be proposed for goods, services or construction. They allow the City to observe and analyze effectiveness and efficiency without a large commitment of resources. Demonstration projects may be initiated by an unsolicited proposal, or by an agency on its own initiative. For client services programs, agencies may initiate a demonstration project in order to invite proposals for innovative approaches to the provision of existing or new services.

(b) Preliminary Discussions. An agency may engage in preliminary discussions with a vendor to explore the feasibility of a proposed demonstration project. Discussions are not negotiations for the award of a contract. A summary of these discussions shall be disclosed in the presolicitation review report.

(c) Determination. Prior to entering into negotiations for the award of a contract for a demonstration project, the ACCO shall make a determination stating that:

(1) testing or experimentation is advisable to evaluate the service or reliability of the product, approach, or technology;

(2) the product, approach, or technology cannot be reasonably acquired for evaluation through a competitive solicitation or there are other potential advantages to the City for using this method of source selection;

(3) the product, approach, or technology is not currently in use in City government;

(4) the results of the demonstration project shall be documented and made publicly available upon its conclusion;

(5) there is an intent to competitively acquire the product, approach, or technology if, after testing and evaluation, a decision is reached to continue its use within the City; and

(6) any outside funding relied upon to justify the award of the contract pursuant to this section has been documented.

(d) Contract Term. The initial term of a contract for a demonstration project should

be for a term that is reasonable both to conduct the demonstration and to determine its effectiveness, and shall not exceed three years. The ACCO shall make a determination setting forth with specificity how the proposed term of the contract was determined. In making such determination, the ACCO may consider whether it would be in the City's best interest to ensure that no break in the provision of services occurs at the end of the demonstration project, if successful. If the ACCO makes such a determination, the ACCO should establish an initial term that, although no longer than three years, is long enough to allow for the subsequent solicitation of those services at the conclusion of the project's evaluation. In the event that a longer period is needed to allow for continuity of services and/or to evaluate the demonstration, the agency may extend the contract for an additional period of up to one year with CCPO approval.

(e) Notice. Prior to entering into negotiations for the award of a contract for a demonstration project exceeding the small purchase limits, the ACCO shall give notice of that determination by placing a notice in the City Record.

(1) Frequency. Notice of intent to enter negotiations for a demonstration project exceeding the small purchase limits shall be published in not less than five consecutive editions of the City Record at least ten calendar days before entering into negotiations with the vendor and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication.

(2) Content. Such notice shall include:

(i) agency name;

(ii) PIN;

(iii) title and/or brief description of the goods, services, or construction to be procured;

(iv) estimated quantity, if any;

(v) name of the proposed vendor, if the agency has identified a vendor;

(vi) summary of the determination;

(vii) how vendors may express their interest in providing such good, services or construction; and

(viii) due date.

(f) Evaluation. Upon the evaluation of expressions of interest received, if any, the ACCO shall make a determination of how to proceed, which includes the basis for such determination. Where it appears that the product, approach, or technology is already competitively available in the marketplace, the ACCO may determine that a competitive solicitation may be issued; or, if it appears that the product, approach, or technology can be reasonably evaluated using short-term contracts with more than one vendor, the ACCO may determine that negotiations

to establish such demonstration projects may be conducted with more than one vendor, or negotiations may proceed with the single vendor originally identified. For client services, whether or not an initial vendor has been identified, an agency may utilize the demonstration project method to solicit proposals for innovative approaches to the provision of existing or new services, in which case the ACCO may determine that negotiations to establish such demonstration projects may be conducted with more than one vendor, or negotiations may proceed with the single vendor originally identified, if any. To the extent required by Section 322 of the Charter, an agency determination to utilize an alternative procurement procedure for a particular procurement or for a particular type of procurement shall require the approval of the Mayor prior to seeking bids or proposals. The CCPO shall have final authority with respect to evaluation, acceptance, and rejection of all demonstration projects.

(g) Negotiations. After completing negotiations, the ACCO shall award the contract if it is determined that the award will be in the City's best interest and that the price is fair and reasonable.

(h) Notice of Award.

(1) Frequency. Award of contracts exceeding the small purchase limits shall be published once in the City Record, within fifteen calendar days after registration of the contract.

(2) Content. Such notice shall include:

(i) agency name;

(ii) PIN;

(iii) title and/or brief description of the goods, services, or construction procured;

(iv) name and address of the vendor;

(v) dollar value of the contract;

(vi) the date of the published notice of intent to enter into negotiations for the award of a contract for a demonstration project; and

(vii) summary determination of the basis for the demonstration project and availability of the full evaluation.

(i) Conclusion of Demonstration Project. At the conclusion of the contract term, based upon the documented results of the project, the agency shall make a determination, including the reasons therefor, whether to competitively acquire or to discontinue the use of the product, approach, or technology.

Section 3-12 INNOVATIVE PROCUREMENT METHODS.

(a) Purpose. Innovative procurement methods test and evaluate the feasibility and application of procurement methods not currently used by the City or provided for under these Rules.

(b) Prerequisites for Using Innovative Procurement Methods.

(1) Approval. Innovative procurement methods require the approval of the CCPO, upon the written request of an ACCO. The CCPO shall not delegate this authority.

(2) Circumstances of Use. An innovative procurement method may be used to procure goods, services, construction, and construction-related services in circumstances where such method would serve the City's interest better than those methods currently available under these Rules.

(3) Notice of Opportunity to Comment on Proposed Method and/or Submit Expression of Interest. The public shall have twenty days to submit written comment on a proposed innovative procurement method and/or submit expressions of interest for a contract to be let pursuant to this section.

(i) Frequency. Notice of such opportunity shall be published in not less than five consecutive editions of the City Record and on the City's website and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. The due date for receipt of comments and submission of expressions of interest shall be not less than twenty days after the final notice in the City Record.

(ii) Content. Such notice shall include:

(A) the name of the agency proposing the innovative procurement method;

(B) PIN;

(C) a description of the goods, services, construction, or construction-related services to be procured using this method, and the approximate dollar value of the procurement;

(D) the reason(s) why the use of such method would serve the City's interest better than the methods currently available under these Rules;

(E) the nature and requirements of the procurement method to be used, including, but not limited, to how vendors may express interest in providing the desired goods, services, construction, or

construction-related services to be procured; the time within which this method will be implemented; how expressions of interests are to be evaluated, and the due date for receipt of comments and/or submitting expressions; and

(F) notice that the proposed innovative procurement method will be evaluated to determine whether it is in the City's interest to codify the method used within these Rules.

(c) Determinations. An ACCO request to use an innovative procurement method shall include a determination detailing:

(1) the nature and requirements of the procurement method being proposed;

(2) the reason(s) why the use of the such method would serve the City's interest better than the methods currently available under these Rules;

(3) the time within which this method will be implemented;

(4) a description of the goods, services, construction, or construction-related services to be procured using this method; and

(5) the approximate dollar value of the contract.

(d) Copies. A copy of the ACCO's determination, the CCPO's approval, and all comments shall be forwarded by the ACCO to the PPB and the Comptroller.

(e) Notice of Award.

(1) Frequency. Notice of an award made pursuant to this section shall be published once in the City Record, within fifteen days after registration of the contract.

(2) Content. Such notice shall include:

(i) agency name;

(ii) PIN;

(iii) title and/or brief description of the goods, services, construction, or construction-related services to be procured;

(iv) estimated quantity, if any;

(v) name and address of the vendor; and

(vi) dollar value of the contract.

(f) Evaluation. The CCPO shall submit to the PPB periodic reports on the activities, results, and findings of each innovative procurement method. No later than sixty days following the registration of a contract let pursuant to this section, the CCPO shall submit an interim report to the PPB summarizing the results of the innovative procurement method. No later than eight months following the registration of a contract let pursuant to this section, the CCPO shall submit a final report recommending whether or not it would be in the City's best interests to codify the innovative procurement method used within these Rules. If the PPB does not codify the method within four months from the date of the CCPO's final report on the first contract using such method, then such method shall not be used for any further solicitations until such time, if any, as the PPB does codify such method.

Section 3-13 GOVERNMENT-TO-GOVERNMENT PURCHASES.

(a) Policy. In addition to other procurement methods authorized by law, government-to-government purchases may be made pursuant to this section when it is in the City's best interest to procure from another governmental entity goods, services, construction, or construction-related services. In such cases, the accepted price, terms, and conditions shall be achieved through negotiation between the agency and the governmental entity. Except for this section, these Rules shall not apply to these procurements.

(b) Preliminary Discussions. An agency may engage in preliminary discussions with a governmental entity to explore the feasibility of a government-to-government purchase. Discussions are not negotiations for the selection of a vendor.

(c) Determination. Prior to entering into a government-to-government purchase, the ACCO shall make a determination citing the reasons why a government-to-government purchase is in the best interest of the City. The ACCO shall further determine that the price is fair and reasonable, taking into consideration the circumstances that otherwise make it in the City's best interest to enter into such purchase. Such determinations shall be approved by the CCPO, which approval shall not be delegated.

(d) Public Notice.

(1) Notice of Intent. Notice of intent to enter into a government-to-government purchase exceeding the small purchase limits shall be published in the City Record for at least five consecutive editions and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. The last date of publication of such notice shall appear no fewer than ten days before negotiations are expected to begin.

(2) Content. Such notice shall include:

(i) agency name;

(ii) PIN;

(iii) title and/or brief description of the goods, services, or construction;

(iv) estimated quantity, if any;

(v) name of the governmental entity;

(vi) how qualified vendors may express their interest in providing such goods, services, or construction in the future;

(vii) due date; and

(viii) a summary of the basis for the determination to use this procurement method.

(e) Notice of Vendor Selection.

(1) Frequency. Notice of vendor selection exceeding the small purchase limits shall be published once in the City Record within fifteen days after the contract is registered by the Comptroller.

(2) Content. Such notice shall include:

(i) agency name;

(ii) PIN;

(iii) title and/or brief description of the goods, services, or construction;

(iv) name and address of the governmental entity;

(v) dollar value of the contract; and

(vi) the date of the published notice of intent to enter into a government- to-government purchase.

Section 3-14 CONTRACTS FOR SERVICES.

(a) Authority to Award. An agency may award a contract for services, including the furnishing of goods incidental thereto, that authorizes utilization of such contract by other City agencies. Such a contract may be an open-ended requirements contract or a contract for a defined quantity of services. Such a contract shall be subject to the prior approval of the CCPO. City agencies may utilize a contract let by another City agency to the extent that such contract authorizes such use.

(b) Public Notice. Public notice(s) for a contract for services awarded pursuant to

this section shall be made pursuant to the requirements prescribed for the procurement method utilized.

Section 3-15 INVESTMENT MANAGERS

(a) Policy. Notwithstanding any other provision of this title, the preferred method of procuring investment management services for the assets of the City's Retirement Systems shall be the Investment Manager Search as described in this section. Upon the demonstration of compelling circumstances and in accordance with this section, an alternative procurement method to procure investment manager services may be utilized with the approval of the CCPO.

(b) Content of Notice of Search. Notices of Search shall include the following:

(1) the Retirement Systems participating in the search;

(2) the asset class or classes for which Investment Managers are being sought;

(3) the minimum requirements for eligibility;

(4) the factors upon which Investment Consultant recommendations will be made after application of minimum requirements;

(5) the database(s) to be reviewed for purposes of identifying candidates for further consideration and the date on which review of the database(s) may commence;

(6) information regarding how to participate in the database(s);

(7) a statement that the contract award will be made to the responsible Investment Manager(s) whose product is determined to be the most advantageous to the Retirement System, taking into consideration the price and such other factors or criteria that are set forth in the Notice of Search;

(8) the specific criteria and relative weight of each criterion or category of criteria that will be used by the Evaluation Committee to evaluate Investment Managers; and

(9) a statement of how price will be evaluated.

(c) Evaluation Process.

(1) Consultant Review. The respective Investment Consultant(s) for each participating Retirement System shall independently review information posted in the databases identified in the Notice of Search, and provide a written report that identifies the Investment Managers that meet the minimum requirements set forth

in the Notice of Search. The Investment Consultants shall provide to the Evaluation Committee a report confirming databases searched and a list of Investment Managers that meet the minimum requirements.

(i) Investment Managers meeting the minimum requirements shall be further analyzed by each participating Investment Consultant based on quantitative and qualitative factors used for institutional investment management services searches. Such factors shall include, but are not limited to, investment philosophy, strategy and process; organizational stability, expertise and expertise of staff; regulatory history as well as analysis of customary and appropriate historic and comparative investment portfolio performance metrics; and such other factors consistent with industry standards for institutional investment management services and the Retirement System's investment policies and guidelines.

(ii) Following the analysis in subparagraph (i) of this paragraph, each Investment Consultant shall provide a written report describing the basis for its recommendations of qualified Investment Managers for further consideration by the evaluation committee.

(2) Evaluation Committee. An evaluation committee consisting of no fewer than three persons with knowledge, expertise, and experience sufficient to make a fair and reasonable evaluation shall be established. The ACCO shall require each member of the evaluation committee to submit a signed statement, in a format approved by the CCPO, agreeing to prohibitions on any conflicts of interest. The evaluation committee may include outside evaluators pursuant to section 3-03(g)(1)(b) of this chapter.

(3) Shortlist of Investment Managers.

(i) The evaluation committee shall establish a Shortlist of qualified Investment Managers for further review comprised of the Investment Managers that received multiple recommendations from the Investment Consultants.

(ii) The ACCO shall contact each Investment Manager on the Shortlist and request written confirmation that he or she is interested in being considered for a contract award. Any Investment Manager who does not provide written confirmation within the time period established by the ACCO, such period not to be less than ten days, shall be removed from the Shortlist.

(4) Evaluation Committee Review. The evaluation committee shall then evaluate the Shortlist of Investment Managers in accordance with the evaluation criteria set forth in the Notice of Search. The evaluation committee may require Investment Managers on the Shortlist of Investment Managers to submit information and documentation consistent with the evaluation criteria in the Notice

of Search. The Evaluation Committee will review the recommendations of the Investment Consultants and work with each Investment Consultant to obtain information and documentation necessary to optimize the portfolio recommendations for the respective Board of Trustees.

(i) Rating Sheets. Ratings sheets or other written evaluation forms shall be used to evaluate Investment Managers and each evaluator shall sign and date his or her rating sheet. Initial ratings may be amended and the amended ratings recorded on amended rating sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained.

(ii) The Evaluation Committee shall, based on its ratings, refine the Shortlist to create a Finalist List from which to solicit written proposals. Such written proposals shall include, at a minimum, a proposed investment strategy, process, and guidelines; a proposed staffing structure including key personnel; and a price proposal.

(iii) Discussions with Investment Managers. The evaluation committee may elect to enter into discussions with those Investment Managers as part of the evaluation process either before or after proposals are solicited and/or for the purpose of arriving at a contract that will be most advantageous to the Retirement System(s), taking into consideration price and the other evaluation factors set forth in the Notice of Search.

(iv) Conduct of Discussions.

(A) Investment Managers shall be accorded fair treatment with respect to any opportunity for discussions and clarifications of information.

(B) Working with the Evaluation Committee and Investment Consultants, the ACCO shall provide the Investment Manager with customized agendas and schedule for conducting discussions.

(C) Auction techniques (revealing one Investment Manager's price to another) and disclosure of any information derived from competing proposals are prohibited.

(D) Any oral clarification of a proposal shall be confirmed in writing by the Investment Manager.

(v) Best and Final Offers. Best and final offers are the revised and corrected final offers submitted by Investment Managers after discussions, if any, have been held. The ACCO shall establish a common date and time for the submission of best and final offers. Best and final offers shall be submitted only once unless the ACCO makes a determination that it is in the Retirement System's best interest to conduct additional discussions

and/or require another submission of best and final offers. All best and final offers shall be handled in accordance with the control procedures contained in Section 3-03(f)(9) of this section. Best and final offers shall be evaluated in accordance with this subdivision and the Notice of Search.

(vi) Report to Board of Trustees. The Evaluation Committee, in consultation with the Investment Consultants, shall provide the Board of Trustees of the participating Retirement System(s) or its delegee with a written report summarizing the evaluation of all firms on the Shortlist of Investment Managers and at least two optimized portfolio recommendations prior to the Board of Trustees making a determination on the award of contract(s).

(5) Investment Manager Selection. Contract award(s), if any, must be made to the responsible proposer whose proposal is determined to be the most advantageous to the Retirement System(s), taking into consideration the price and such other factors or criteria that are set forth in the Notice of Search. In evaluating Investment Managers, only price, portfolio optimization and the criteria set forth in the Notice of Search may be considered. In considering price, methods such as ranking the Investment Managers on the Shortlist of Investment Managers by price, evaluating price per technical point, or evaluating Investment Managers on the Shortlist of Investment Managers in accordance with another combination of price and technical merit may be used. Such methods may result in selection of the highest technically rated Investment Manager over another technically qualified Investment Manager who offered a lower fee as a result of factors including, but not limited to, the selected Investment Managers' philosophy, strategy and process; stability and expertise of staff; regulatory history; and analysis of customary and appropriate historic and comparative investment portfolio metrics.

(6) Documentation of Award. The ACCO shall make a determination showing the basis on which the contract award was made to the responsible Investment Manager whose product was determined to be the most advantageous to the Retirement System(s), taking into consideration the price and such other factors or criteria that are set forth in the Notice of Search. This determination shall be included in a Recommendation for Award. Each Recommendation for Award shall include at a minimum the following information:

(i) justification of the award;

(ii) if the award is for services for which there is price history, a price comparison of the proposed price versus previous price, if applicable, with the rationale for any increases supported by cost/price analysis data;

(iii) reasons for multiple awards;

(iv) any special terms and conditions included in the proposed contract via the use of cost/price analysis techniques;

(v) affirmative finding of responsibility for the selected Investment Manager(s); and

(vi) efforts to negotiate better value.

Upon determination of the most favorable product(s) and after obtaining all required approvals, the Contracting Officer shall award the contract to that Investment Manager.

(d) Public Notice.

(1) Notices of Search. Notice of Notices of Search above the small purchase limits shall be published once in the City Record not less than twenty days before Investment Manager information is required to be entered into a database. Such notice shall include:

(i) Retirement System(s) names;

(ii) PIN;

(iii) title and/or brief description of the investment services being sought;

(iv) how interested investment managers may provide data to be included in identified databases, including date and time by which such data shall be submitted; and

(v) required minimum qualifications or eligibility requirements, if any.

(2) Simultaneous to their publication as required by paragraph one of this subdivision, Notices of Search shall be posted on the City's website in a location that is accessible to the public. Notices of Search shall also be furnished to each participating Investment Consultant. Notices of Search shall be made available electronically.

(3) Notice of Manager Selection.

(i) Frequency. Notice of Investment Manager selection exceeding the small purchase limits shall be published once in the City Record within fifteen days after registration of the contract.

(ii) Content. Such notice shall include:

(A) Retirement System name;

(B) PIN;

(C) title and/or brief description of the services procured;

(D) name and address of the Investment Manager;

(E) dollar value of the contract; and

(F) procurement method by which the contract was let.

Section 3-16 HHS ACCELERATOR.

(a) Policy.

(1) Client services contracts must be procured through HHS Accelerator unless the HHS Accelerator Director authorizes, with the approval of the CCPO, the use of a different procurement method. Notwithstanding the above, the authorization of the HHS Accelerator Director is not required for procurements pursuant to Section 1-02(d); Section 1-02(e); Section 3-04(b)(2)(iii); Section 3-05; Section 3-06; Section 3-08; Section 3-09; and Section 3-13.

(2) The HHS Accelerator Director prequalifies vendors by evaluating their qualifications to provide client services (including subcategories of specific client services). When procuring client services pursuant to this Section, an agency must issue a solicitation for a specific contract to HHS Accelerator prequalified vendors in accordance with the provisions of this Section. The ACCO may permit joint ventures of two or more prequalified vendors. A procurement using HHS Accelerator is considered a "special case" under these Rules without the requirement for a further determination.

(b) Criteria. In developing the HHS Accelerator PQL, the HHS Accelerator Director may use any of the criteria listed in this subsection. Criteria that may be used to prequalify vendors for HHS Accelerator include, but are not limited to:

(1) current and past experience with similar projects;

(2) references, past performance, and reliability;

(3) organization, number of staff, staff abilities and experience, and the organization's ability to undertake the type and complexity of work;

(4) financial capability, responsibility and reliability for such type and complexity of work, and availability of appropriate resources;

(5) compliance with all federal, state, and local laws, rules, licensing requirements, where applicable, and executive orders, including but not limited to compliance with existing labor standards;

(6) compliance with equal employment opportunity requirements and anti- discrimination laws;

(7) business integrity of vendor.

(c) Public Notice of HHS Accelerator PQL.

(1) Frequency. At least once annually for five consecutive editions, the HHS Accelerator Director must publish in the City Record, a notice or notices specifically identifying client services categories covered by HHS Accelerator and inviting vendors to apply for inclusion on the HHS Accelerator PQL. The same documents published in the City record must be posted continuously and prominently on the City's website. The City's website shall also include the criteria used to prequalify vendors. The application to be included on the HHS Accelerator PQL must always be available.

(2) Content. The notice must include contact information for the HHS Accelerator Office, the procurement category, and information on how the vendor may obtain an application.

(d) Prequalification Questionnaire. A vendor must complete and submit a prequalification questionnaire developed by the HHS Accelerator Director in consultation with the CCPO. After prequalification, a vendor may update information contained in HHS Accelerator as needed. At least once every three years, and when submitting any bid or proposal in response to a solicitation from the HHS Accelerator PQL, vendors must affirm that there has been no change in the information included in the prequalification questionnaire, or if there have been changes, provide the changed information.

(e) Making the Prequalification Decision. Prequalification questionnaires will be reviewed by the HHS Accelerator Director and other personnel with knowledge, expertise, and experience sufficient to make a fair and reasonable determination, as appropriate. The HHS Accelerator Director must approve or deny prequalification within ninety days from the date of submission of a properly completed prequalification questionnaire.

(f) Denial or Revocation of Prequalification.

(1) Any vendor whose qualifications fail to meet the criteria established by the HHS Accelerator Director will be denied prequalification. The prequalified status of a vendor may be revoked at any time based on changed circumstance, conditions, or status of the vendor or its staff, or additional information acquired by the HHS Accelerator Director, or further analysis of the information upon which the original prequalification determination was

made where the new information or further analysis indicates that the vendor does not meet the established criteria for prequalification.

(2) The HHS Accelerator Director must notify the vendor in writing of a denial or revocation of prequalification, stating the reasons for the determination and informing the vendor of the right to appeal. The notification must also include the following statement:

> The vendor must also send a copy of its appeal to the New York City Comptroller, for informational purposes, at the Office of the New York City Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, NY 10007, (212) 669-2323.

A copy of the HHS Accelerator Director's determination must also be sent to the CCPO for inclusion in the VENDEX database and to the Comptroller's Office.

(3) HHS Accelerator PQLs must be reviewed at least once every three years to ensure that firms that no longer meet prequalification criteria are not retained on the list.

(g) Appeal of Denial or Revocation of Prequalification.

(1) Time Limit. A vendor shall have fifteen days from receipt of the determination to file a written appeal of that determination with the HHS Accelerator Director. Receipt of notice by the vendor will be deemed to be no later than five days from the date of mailing, or upon delivery if delivered using a system that provides proof of the date of delivery. Filing of the appeal must be accomplished by actual delivery of the hard copy appeal document to the office of the HHS Accelerator Director using a system that provides proof of the date of delivery.

(2) Form and Content. The appeal must be in writing and must briefly state all of the facts or other basis upon which the vendor contests the HHS Accelerator Director's determination. Supporting documentation, if any, must be included.

(3) Determination. The HHS Accelerator Director must consider the appeal, and must make a prompt written decision with respect to its merits. The HHS Accelerator Director may in his/her sole discretion convene an informal conference with the vendor to resolve the issue by mutual consent prior to making a determination.

(4) Notification. A copy of the decision of the HHS Accelerator Director must be sent to the vendor, stating the reasons for the decision and informing the vendor of the right to appeal. A copy of the determination must be sent to the Comptroller's Office and to the CCPO to modify the VENDEX database.

(5) Appeal to OATH. The decision of the HHS Accelerator Director shall be final unless appealed to OATH. If a vendor wishes to contest the HHS Accelerator Director's decision, it may appeal to OATH, which shall hear and take final action in the matter in accordance with its rules. The petition to OATH shall be filed by the vendor within fifteen days of the date of the decision. Supporting documentation, if any, shall be included. The vendor shall, at the same time, send a copy of its appeal to the HHS Accelerator Director, CCPO, and Comptroller's Office. The HHS Accelerator Director shall forward a copy of all appeal-related documents within fourteen days of its receipt of the copy of the vendor's appeal to OATH. During the pendency of the appeal, an Agency may proceed with the solicitation. OATH shall review the decision and determine whether that decision is arbitrary or capricious and whether it is based on substantial evidence. Copies of OATH's determination shall be sent to the vendor, HHS Accelerator Director, Comptroller's Office, and, where the decision results in the revocation of prequalification, to the CCPO for any modifications to the VENDEX database.

(h) Prequalification Not a Finding of Responsibility. That a vendor has been prequalified does not imply a finding of responsibility for a particular procurement. Between the time of receipt of proposals or bid opening and contract award, the ACCO may determine that a prequalified vendor is not responsible for a particular procurement pursuant to Section 2-08. If the ACCO makes such determination, in addition to the requirements of Section 2-08, he or she must also notify the HHS Accelerator Director, who will the determine whether a vendor should be removed from the PQL.

(i) Solicitation from HHS Accelerator PQL. The solicitation of bids or proposals through HHS Accelerator is limited to vendors on the HHS Accelerator PQL who are prequalified in the specific category(ies) of client services being solicited. The solicitation of bids or proposals through HHS Accelerator must be publicly advertised to provide notice to vendors of the solicitation and an opportunity to apply for prequalification in order to submit a proposal.

(j) Requirement for a Concept Report for a New Client Services Program. At least 45 days prior to issuing a Client Services Requests for Proposals ("CS-RFP") for a new client services program, the agency must publicly release a concept report regarding such CS-RFP.

(1) For the purposes of this section, the term "new client services program" means any program that differs substantially in scope from an agency's current contractual client services programs, including, but not limited to, substantial differences in the number or types of clients, geographic areas, evaluation criteria, service design, or price maximums or ranges per participant, if applicable.

(2) For the purposes of this section, the term "concept report" means a document outlining the basic requirements of an RFP for client services contracts and includes, but is not limited to, the following information:

(i) purpose of the CS-RFP;

(ii) planned method of evaluating proposals;

(iii) proposed term of the contract(s);

(iv) procurement timeline, including, but not limited to, the expected start date for the new contract(s), expected CS-RFP issuance date, approximate proposal submission deadline and expected award announcement date;

(v) funding information, including but not limited to, total funding available for the CS-RFP and sources of funding, anticipated number of contracts to be awarded, average funding level of contracts, anticipated funding minimums, maximums or ranges per participant, if applicable, and funding match requirements, if any;

(vi) program information, including, but not limited to, as applicable, proposed model or program parameters, site, service hours, participantpopulation(s) to be served and participant minimums and/or maximums; and

(vii) proposed vendor performance reporting requirements.

(3) Notwithstanding the issuance of a concept report, the agency may change the above-required information at any time after the issuance of such concept report.

(4) Prior to release of the concept report, the agency must publish a notification of its release in five consecutive editions of the City Record and electronically on the City's website in a location that is accessible to the public.

(5) Upon release, the concept report must be posted electronically on the City's website in a location that is accessible to the public.

(6) Non-compliance with this section shall not be grounds to invalidate a contract.

(k) **CS-RFP Contents.** CS-RFPs must include the following data:

(1) statement that the contract award will be made only to vendors that are prequalified through HHS Accelerator at the time that proposals are due;

(2) statement that the contract award will be made to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the price and such other criteria that are set forth in the RFP;

(3) statement of work or scope of services statement, performance requirements, and any special instructions;

(4) the specific criteria and the relative weight of each criterion or category of criteria that will be used to evaluate the proposals;

(5) statement of how price will be evaluated. In addition, the following statements regarding price must be included:

(i) a notice that prices shall be irrevocable until contract award, unless the proposal is withdrawn, and that offers may be withdrawn only after the expiration of ninety days (or such longer period as is specified in the solicitation) after opening of proposals, in writing received by the agency prior to award;

(ii) if applicable, request for cost breakdown of the proposed price;

(6) proposal submission requirements including requirements, if any, for the electronic submission of proposals, including through the use of documents contained in the HHS Accelerator document repository; if applicable, that technical and price proposals must be submitted in separate sealed envelopes (paper) or attachments (electronic); and the time and date after which proposals will not be accepted as well as the location of proposal submission;

(7) other information such as delivery dates or time frames within which the work must be completed. Where it is anticipated that a contract will extend beyond one year, the following information must be included in any solicitation, in addition to any other requirements of these Rules:

(i) a statement of intent to award a multi-term contract, and an estimate of the quantity of services required for the proposed contract period;

(ii) a request for a proposal of a total price which shall be binding in the first year and may be negotiable from year to year thereafter;

(iii) that the multi-term contract is subject to modification or cancellation if adequate funds are not appropriated to the agency to support continuation of performance in any fiscal year succeeding the first;

(iv) that the multi-term contract is subject to modification or cancellation if the vendor's performance is not satisfactory;

(v) that the Contracting Officer must notify the vendor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-term contract for each succeeding fiscal year;

(vi) whether proposers must submit prices for the first year, for the entire period of performance, or for some portion of the period; and

(vii) a statement setting forth those costs, if any, for which the

vendor will be reimbursed in the event of cancellation;

(8) general as well as special terms and conditions, if applicable;

(9) a notice of the proposer's rights to appeal certain decisions;

(10) a notice of the City's prompt payment policy, including an explanation of the requirements for invoicing;

(11) a requirement for acknowledgment of amendments;

(12) if applicable, a request for a description of experience in the line of work being considered (including references);

(13) if applicable and necessary in the judgment of the Contracting Officer, a request for description of staff capability along with the resumes of key individuals who will work on the contract;

(14) a notice that although discussions may be conducted with offerors submitting acceptable proposals, award may be made without any discussions;

(15) if applicable, a provision on the submission and consideration of multiple or alternate proposals;

(16) a provision that proposers should clearly identify those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposals;

(17) a notice that contract award is subject to the provisions of the MacBride Principles Law;

(18) a notice that contract award is subject to applicable provisions of federal, state, and other local laws and executive orders requiring affirmative action and equal employment opportunity;

(19) if applicable, a notice that contract award is subject to completion of a VENDEX questionnaire and review of that information by the Department of Investigation;

(20) where applicable, all information required pursuant to Section 312(a) of the Charter;

(21) the following statement:

> The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the proposal process should inform the

Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, NY 10007; telephone number (212) 669-2323; and

(22) name, address, and telephone number of contact person; and

(23) if applicable, information regarding multiple award task order contracts for services.

(l) "Open ended" CS -RFPs. For a client services program in which there is available funding for more than the available responsible vendor, and for which the requirements and qualifications are unusually complex and difficult to predict (such as Uniform Land Use Review Procedures approvals of appropriate sites, licenses, etc.) and for which interested potential vendors may become qualified during the course of a year, the ACCO may designate the applicable RFP as an "open -ended RFP." If an RFP is so designated, the agency must publish quarterly in the City Record a notice of solicitation, clearly stating that the RFP may be obtained at any time and that proposals may be submitted in response to the RFP on an on-going basis. When an agency decides to terminate the open-ended RFP, it must publish the termination in the City Record.

(m) Proposal Preparation Time and Form.

(1) Vendors must be given a reasonable time to prepare their proposals, and this time must never be less than ten days. How proposals are to be submitted, including any required forms, must be included in the RFP.

(2) The ACCO is responsible for ensuring that an extract or copy of the scope of work is available for public inspection upon request at the agency issuing the solicitation and that the notice of the solicitation includes a description of the proposed service area and the name and telephone number of an agency individual who can be contacted to provide a copy of the extract or the scope of work.

(n) Public Notice.

(1) Notice of solicitation. When RFPs, notices of their availability or notices of solicitation are published, they must also be simultaneously posted on the City's website in a location that is accessible to the public. An agency may, upon a vendor's request, provide RFPs or notices electronically. Notices of solicitation and copies of the CS-RFP must be delivered electronically at least twenty days prior to the due date to all vendors prequalified through HHS Accelerator for the applicable category(ies), unless a selective solicitation is being utilized pursuant section 3-16(j). Vendors must respond to the solicitation electronically via the HHS Accelerator System.

(2) <u>Notice of Vendor Selection.</u>

(i) Frequency. Notice of vendor selection exceeding the small purchase limits must be published once in the City Record within fifteen days after registration of the contract.

(ii) Content. Such notice must include:

(A) agency name;

(B) PIN;

(C) title and/or brief description of the goods, services, or construction to be procured;

(D) name and address of the vendor;

(E) dollar value of the contract; and

(F) procurement method by which the contract was let.

(o) CS-RFP Handling Procedures.

(1) Pre-Proposal or Pre-Solicitation Conferences. Pre-proposal or pre-solicitation conferences may be conducted as set forth in Section 3-02 of these Rules.

(2) Amendments to CS-RFPs. Amendments to CS-RFPs may be made as set forth in Section 3-02 of these Rules and will be issued by the Agency through HHS Accelerator.

(3) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn prior to the established due date as set forth in Section 3-02 of these Rules. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any, or if discussions have begun, the time and date by which best and final offers must be submitted.

(4) Late Proposals and Modifications. Any proposal or modification received after the established due date and time at the place designated for receipt is late and may be accepted only as set forth in paragraphs (5) through (8) below.

(5) Handling and Acceptance of Late Proposals. A late proposal may only be accepted if the ACCO determines that it is in the best interest of the City to do so. In such event, the ACCO may hold open the receipt of proposals by no more than three hours, during which time no other competing proposal may be opened. The ACCO may, upon written approval by the CCPO, hold open the receipt of proposals by longer than three hours, but until no later than the original submission time on the next business day; such approval may be given by the CCPO only where the need for

holding the receipt of proposals open for a longer time arises from generally applicable emergency circumstances, such as weather or transit emergencies. No late proposals can be accepted if any proposals have been opened. Where an ACCO has determined that it is in the best interest of the City to accept a late proposal, any other late proposal received during the period of extension must also be accepted.

(6) Documentation of Late Proposals. The ACCO must, within one business day of accepting late proposals, document the reasons that it is in the best interest of the City to approve the extension, indicate the length of time extended, list the name of any vendor(s) submitting a proposal received during the extension period established pursuant to paragraph (5) above, and include an affirmative statement that no proposals were opened before the late proposal was accepted and that any other late proposal received during the period of extension was also accepted.

(7) Late Modifications. A late modification of an accepted proposal that makes its terms more favorable to the City must be considered at any time it is received and, if accepted by the ACCO, must be so documented in the Recommendation for Award.

(8) Record. A record must be made of each request for acceptance of a late proposal or modification. A late proposal or modification that is not accepted by the ACCO must not be opened until after registration of the contract.

(9) Receipt and Registration of Proposals. The identity of an offeror shall not be disclosed prior to the established date and time for receipt of proposals. Proposals shall not be opened publicly. Proposals and modifications shall be time and date- stamped upon receipt and held in a secure place until the established due date and time. After the date and time established for the receipt of proposals, a Register of Proposals including shall be prepared and available for public inspection after award of a contract.

(p) Evaluation Process. Award, if any, must be made to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP. In evaluating the proposals, the agency may consider only price and the criteria set forth in the RFP. In considering price, the agency may use methods such as ranking technically viable proposals by price, evaluating price per technical point, or evaluating proposals in accordance with another combination of price and technical merit. Such methods may result in the agency selecting the highest technically rated proposer over another technically qualified proposer who offered a lower fee as a result of factors including, but not limited to, the selected vendor's superior technical skill and expertise, increased likelihood of timely completion, and/or ability to manage several projects simultaneously with lower overall costs to the City, including costs in City personnel time and consultants.

(1) Evaluation Committee. Proposals must be reviewed by an evaluation committee of no fewer than three persons with knowledge, expertise, and

experience sufficient to make a fair and reasonable evaluation. If an RFP incorporates multiple competitions, each competition may be evaluated by a separate committee. Each member of the evaluation committee(s) must submit a signed statement to the ACCO, in a format approved by the CCPO, agreeing to prohibitions on any conflicts of interest.

(a) Randomized evaluation process. If the HHS Accelerator Director determines that the expected number of proposals will be large enough to make it infeasible for each member of the evaluation committee to read each proposal, the ACCO may, subject to the approval of the HHS Accelerator Director, establish a pool of appropriate evaluators and then randomly assign each proposal to at least three such evaluators for review.

(b) Outside Evaluators. The evaluation committee may include persons not employed by the agency. In addition, the ACCO may determine, subject to the approval of the HHS Accelerator Director, that it is in the best interests of the City for the evaluation committee to include persons who are not employees of the City of New York, provided that such non-City employees may not constitute a majority of the evaluation committee. Such persons must serve without compensation, but may be entitled to travel and other related expenses as may be reasonably incurred in their role as an evaluator.

(2) Rating Sheets. Ratings sheets or other written evaluation forms must be used by the evaluators to evaluate proposals . Each evaluator must sign and date his or her rating sheet. Initial ratings may be amended and the amended ratings recorded on amended ratings sheets. Copies of all initial and amended rating sheets or evaluation forms must be maintained.

(3) Proposal Discussions with Individual Offerors. The evaluation committee must evaluate all proposals and may elect to enter into discussions with those offerors whose proposals are acceptable or are reasonably likely to be made acceptable. Discussions with offerors may be for any or all of the following purposes:

(i) to promote understanding of the City's requirements and the vendors' proposals and capabilities;

(ii) to obtain the best price for the City; or

(iii) to award a contract that will be most advantageous to the City taking into consideration price and the other evaluation criteria in the RFP.

(4) Conduct of Discussions.

(i) Proposers shall be accorded fair treatment with respect to any opportunity for discussions and revisions of proposals.

(ii) The ACCO must set an agenda and schedule for conducting discussions.

(iii) If there is a need for any substantial clarification of, or change in, the RFP, the RFP must be amended to incorporate such clarification or change and the amended RFP must be provided to all proposers.

(iv) Auction techniques (revealing one proposer's price to another) and disclosure of any information derived from competing proposals are prohibited.

(v) Any oral clarification of a proposal must be confirmed in writing by the proposer.

(5) Best and Final Offers. Best and final offers are the revised and corrected final proposals submitted by proposers after discussions, if any, have been held by the agency.

(i) The ACCO must establish a common date and time for the submission of best and final offers.

(ii) Best and final offers may be submitted only once unless the ACCO makes a determination that it is in the City's best interest to conduct additional discussions and/or require another submission of best and final offers.

(iii) Proposers must be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(iv) All best and final offers must be recorded on the Register of Proposals and handled in accordance with the control procedures contained in this Section.

(v) The ACCO may request best and final offers on the whole proposal or on any one or combination of its component parts (e.g., price, technical qualifications, approach, and/or capability). The request must be the same for all proposers.

(vi) Best and final offers must be evaluated in accordance with subdivision 3-16(q).

(q) Mistakes in Proposals.

(1) Confirmation of Proposal. When the ACCO knows or has reason to conclude before award that a mistake has been made by the proposer, he or she must request the proposer to confirm the proposal. If the proposer alleges there is a mistake in the proposal, the proposal may be corrected or withdrawn during

any discussions that are held or if the conditions set forth in this subdivision are met.

(2) Mistakes Discovered After Receipt of Proposals but Before Vendor Selection.

(i) During Discussions Prior to Best and Final Offers. Once discussions are commenced with any proposer or after best and final offers are requested, any offeror may correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(ii) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror, must be treated in accordance with Section 3-02(m)(3)(i) of these Rules.

(iii) Correction of Mistakes. If discussions are not held or if the best and final offer upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only in accordance with Section 3-02(m)(3)(ii) of these Rules.

(3) Mistakes Discovered After Vendor Selection. Mistakes may not be corrected after vendor selection except in accordance with Section 3-02(m)(4) of these Rules.

(4) Determinations Required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a determination must be prepared in accordance with Section 3-02(m)(5) of these Rules.

(r) Vendor Selection and Documentation. The ACCO must make a determination showing the basis on which the contract award was made to the responsible proposer whose proposal was determined to be the most advantageous to the City, taking into consideration the price and other criteria in the RFP. This determination must be included in a Recommendation for Award. Each Recommendation for Award must include at a minimum the following information:

(1) justification of the award;

(2) if the award is for client services for which there is agency price history, a price comparison of the proposed price versus previous price, with reasons for any increases as supported by a cost/price analysis;

(3) reasons for multiple award contracts;

(4) any special terms and conditions included in the proposed contract that were derived from a cost/price analysis;

(5) affirmative finding of responsibility for the selected proposer(s); and

(6) efforts to negotiate better value.

Upon determination of the most favorable proposal and after obtaining all required approvals, the Contracting Officer shall award the contract to that proposer.

CHAPTER 4 - CONTRACT ADMINISTRATION

Section 4-01 EVALUATION AND DOCUMENTATION OF VENDOR PERFORMANCE.

(a) Criteria. Performance evaluation shall conform to the requirements of the contract, including, but not limited to, quality and timeliness of performance, and fiscal administration and accountability. The agency awarding the contract shall identify specific objectives and evaluation criteria to be included as part of the contract. Where practicable, the agency shall develop both qualitative and quantitative performance indicators, including outcome criteria.

(b) Frequency. The agency shall monitor the vendor's performance against such standards and indicators on an ongoing basis and sufficiently far in advance of the end of the contract term to determine whether an existing contract should be extended, renewed, terminated, or allowed to lapse. A performance evaluation shall be done no less than once annually except that for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the small purchase limits, an evaluation report shall be prepared only in cases of deficient performance. Notification to the vendor of deficient performance shall be made as soon as practicable, and shall not await the annual evaluation. The CCPO shall establish procedures to ensure systematic evaluation of vendor performance.

(c) Report and Vendor Response. The evaluation and supporting documentation shall be incorporated in a report. A copy of the evaluation report and a copy of this section shall be sent promptly to the vendor. Within fifteen days of receipt of a copy of the evaluation report (or any notification of deficient performance), the vendor shall respond in writing to the agency. Such response shall include a corrective action plan identifying with specificity the steps the vendor intends to take to remedy any deficiencies identified by the agency. Failure to respond within the specified time shall constitute the vendor's agreement with the contents of the report, but will not release the vendor from its obligations under this section. The CCPO shall establish a centralized computerized database for storage and retrieval of the evaluation.

(d) Contract Termination. Nothing in this section shall affect an agency's right to terminate a contract for deficient performance or otherwise, in accordance with the terms of the contract.

(e) Client Services.

(1) Unannounced Site Visits. Performance evaluations shall include periodic unannounced site visits and interviews with clients and staff. The results of the unannounced site visits shall be summarized and made a part of the evaluation report.

(2) Assessments of Client Satisfaction. The agency shall assess client

satisfaction by using techniques such as periodic interviews with clients, interviews with members of the clients' families, questionnaires to survey clients or their families, or such other techniques as may be appropriate. In the event that interviews or surveys are used, clients shall be selected on a statistically random basis to ensure sampling of a representative cross-section of the client population.

Section 4-02 CONTRACT CHANGES.

(a) Policy.

(1) All changes to existing contracts shall be approved by the ACCO and shall be reflected in a change order, which, once authorized, shall become a part of the original contract. A copy of the change order shall be sent to the vendor within ten days after authorization of the change. Vendors who deviate from the requirements of the original contract without a duly authorized change order do so at their own risk.

(2) The ACCO may include in any solicitation a provision for determining the cost of expected changes, so that these costs can be competitively determined before award.

(b) Types of Changes Permitted.

(1) Changes may include any one or more of the following:

(i) specification changes to account for design errors or omissions;

(ii) changes in contract amount due to authorized additional or omitted work. Any such changes require appropriate price and cost analysis to determine reasonableness. In addition, except for non-construction requirements contracts, all changes that cumulatively exceed the greater of ten percent of the original contract amount or $500,000 shall be approved by the CCPO;

(iii) extensions of a contract term for good and sufficient cause for a cumulative period not to exceed one year from the date of expiration of the current contract. Requirements contracts shall be subject to this limitation;

(iv) extensions of a contract term pursuant to Section 3-11(d)(2) of these Rules;

(v) changes in delivery location;

(vi) changes in shipment method; and

(vii) any other change not inconsistent with this section.

(2) Changes Not Permissible for Material Alterations of Scope. Changes are permitted only for work necessary to complete the work included in the original scope of the contract, and for non-material changes to the scope of the contract. Changes are not permitted for material alterations in the scope of the work or for the insertion of a renewal clause to the contract. Material alterations to the scope of the work may be made only by a new procurement.

(3) Small Purchases. Changes to small purchases shall not bring the total value of the procurement to an amount greater than the small purchase limits.

(4) Subcontracts. Changes to construction subcontracts shall be made in accordance with Section 4-13 (d) of these Rules.

(c) Adjustments of Price or Time for Performance. The vendor may be entitled to a price adjustment for extra work performed or to be performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the vendor may be entitled to an extension of time for performance.* Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

(d) Documentation.

(1) Changes shall be categorized by type and numbered sequentially.

(2) For each procurement, the ACCO shall maintain a log of all executed change orders that shall include:

(i) the name of the vendor and the original contract amount;

(ii) the reason(s) for and the dollar amount of the change order; and

(iii) a running total of the value of the changes and the resulting revised contract amount.

(3) As-built field records shall be maintained by the agency or its designated construction site representative.

Section 4-03 EXTENSIONS OF TIME FOR PERFORMANCE.

(a) Application. If performance by the contractor is delayed for a reason set forth in the contract, and performance will not be completed within the time period or by the date set forth in the contract, a reasonable extension in time for performance may be allowed.

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* §4-03 of these Rules

(b) Goods and Services.

(1) An extension of time may be granted only by the ACCO of the agency that awarded the contract upon written application by the contractor. An extension pursuant to this section may be granted only for performance based contracts (such as for the delivery of goods or deliverable based services) and this section does not apply to extensions pursuant to Section 4-02 or renewals pursuant to Section 4-04 of these Rules. For contracts consisting of separate deliverable based elements (such as task or purchase orders pursuant to a requirements contract), an extension pursuant to this section may be made only for such deliverable based elements (such as task or purchase orders) and not the underlying contract.

(2) The ruling of the ACCO is final and binding as to the allowance of an extension, and the number of days allowed.

(3) The application for extension must detail each cause for delay, the date it occurred, and the resulting total delay in days attributed to such cause. For construction related services, the application must detail the cause for the delay only if it is within the knowledge of the applicant.

(4) For construction related services, if the extension is based on a delay in construction, the extension must not exceed the extension granted for the construction contract, unless the application sets forth an additional basis for the extension.

(c) Construction. An extension of time may be granted only by the ACCO of the agency that awarded the contract or by the Board of Time Extension (as set forth below), upon written application by the contractor.

(1) Application for Extension of Time.

(i) Before a contractor's time extension request may be approved, the contractor must submit a written application identifying, at a minimum:

(A) the contractor, the contract registration number, and project description;

(B) liquidated damage assessment rate, as specified in the contract;

(C) original bid amount;

(D) the original contract start date and completion date;

(E) any previous time extensions granted (number and duration); and

(F) the extension of time requested.

(ii) In addition, the application for extension of time shall set forth in detail:

(A) the nature of each alleged cause of delay in completing the work;

(B) the date upon which each such cause of delay began and ended and the number of days attributable to each such cause;

(C) a statement that the contractor waives all claims except for those delineated in the application, and the particulars of any claims which the contractor does not agree to waive. For time extensions for substantial and final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and

(D) a statement indicating the contractor's understanding that the time extension is granted only for the purpose of permitting continuation of contract performance and payment for work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

(2) Analysis and Approval of Time Extensions.

(i) For time extensions for partial payments, a determination shall be made by the ACCO who may, for good and sufficient cause, extend the time for the performance of a contract as follows:

(A) if the work is to be completed within six months, the time for performance may be extended for sixty days;

(B) if the work is to be completed within less than one year but more than six months, an extension of ninety days may be granted;

(C) if the contract period exceeds one year, besides the extension granted in subparagraph (B) above, an additional thirty days may be granted for each multiple of six months involved beyond the one year period; or

(D) if exceptional circumstances exist, the ACCO may extend the time for performance beyond the extensions in A, B, and C above.

(ii) For extensions of time for substantial completion payments and

final completion payments, the agency engineering staff, in consultation with the ACCO, shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of the construction contract). The report shall be subject to review by and approval of the Board of Time Extension, which shall have authority to question its analysis and determinations and request additional facts or documentation.

(iii) Approval Mechanism for Time Extensions for Final or Substantial Completion Payments. An extension of time for a final or substantial completion payment shall be granted only with the approval of the Board of Time Extension comprised of the ACCO, the Corporation Counsel, and the Comptroller, or their authorized representatives.

(3) Assessment of Liquidated Damages. In the case of substantial completion and final completion payments on construction contracts, liquidated damages shall be assessed against the contract as determined by the report's analysis of the contract delays. However, neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension at substantial or final completion, shall operate as a waiver or release of any claim the City may have against the contractor for either actual or liquidated damages.

Section 4-04 RENEWALS.

(a) Defined. Renewals are defined as re-registration of previous contracts with the same vendor, with substantially unchanged terms and conditions, but possibly revised quantities, lists, or schedules or items to be supplied.

(b) Renewals Not Permitted. Unless specifically contracted for, as in contracts containing an option to renew, renewals shall not be permitted where:

(1) additional quantities of goods are required, except in the case of goods acquired through requirements contracts (which shall be subject to the contract term extension limitations in Section 4-02(b)(1)(iii), or

(2) except as provided in Sections 4-02(b)(1)(ii) and 4-02(b)(1)(iii), a continuation of types of services is required, the procurements shall be made by new solicitations by one of the appropriate methods of source selection set forth in these Rules.

(c) Recommendation for Renewal. The Contracting Officer shall prepare a Recommendation for Renewal which shall be approved by the ACCO. The Recommendation for Renewal shall include the following documentation:

(1) agency name and department;

(2) PIN;

(3) vendor name, address, Tax Identification Number, and telephone number;

(4) program name(s) and address(es) where services are actually provided to clients, or administered if the services are not "center-based";

(5) borough(s) and community district(s) in which the program shall operate;

(6) period of (including prospective renewal options, if any) and amount of contract;

(7) period of and amount of prior contract;

(8) source of funding, and a certification from an authorized fiscal officer of the agency that funds are or are expected to be available for the renewal contract;

(9) if applicable, dates of City Record and other publication of notices pertaining to the intent to renew;

(10) an assessment of vendor's performance during the prior contract period (overall rating of latest performance assessment) and a statement, based on the agency's performance evaluation process, of whether the provider's performance for the prior contract period was determined to be in compliance with the requirements of the contract;

(11) if applicable, date, period covered, and findings of latest available financial audit report, name of the CPA firm that conducted it, and whether the CPA firm was unable to express an opinion as to the adequacy of the contractor's books and records;

(12) comparison of actual and contracted levels of service (and/or minimum outcome requirements) for the prior contract period, and for client services, a statement that the services in question are still needed, required or mandated and that renewal of the contract with the existing service provider is in the best interests of the City including the interests of individuals clients, client populations being served and the affected community;

(13) proposed contracted levels of service (and/or minimum outcome requirements) for the new contract;

(14) if a public hearing was held, the date of the public hearing, the number of witnesses testifying, and an explanation of the effect, if any, of the testimony offered at the public hearing on the decision to renew and/or on the terms and conditions of the contract; if a public hearing was not held, an explanation of why a public hearing was not held, including a statement that the renewal contract is

on substantially the same terms and conditions as the original contract;

(15) signature of the ACCO signifying his/her approval and verifying the accuracy of the information;

(16) the date the services contracted for pursuant to this contract were last solicited through a competitive sealed proposal process; and

(17) all applicable determinations called for by these Rules, including a determination, if applicable, that the prices set forth in the contract are still fair and reasonable.

(d) Notice and Publication Requirements for Client Services Renewals. Public notice of the intent to renew a contract shall be provided in accordance with this subdivision, for the purpose of eliciting information concerning the provider's performance and other factors relevant to the renewal.

(1) Contracts subject to the public notice requirement.

(i) In the case of contracts in value greater than $100,000, such notice shall be provided whenever a public hearing is required.

(ii) In the case of contracts in value greater than $25,000 but not more than $100,000, such notice shall be provided unless:

(A) public notice and the approval of the CCPO for the original contract award or the exercise of a renewal option occurred within the prior two years, and

(B) in connection with that award or renewal, public notice and approval were provided concerning both the original contract term and all possible renewal options contained within the contract.

(iii) Public notice is required if the renewal option to be exercised is for a period of three or more years.

(iv) Such notice is not required in the case of renewals of contracts of $25,000 or less.

(2) Publication Requirements. Within seven calendar days after the approval by the ACCO, the agency shall initiate steps to publish notice of the intent to renew once in the City Record and shall post such notice on the City's website in a location that is accessible by the public simultaneously with its publication. The agency may also publish notice of the intent to renew in one or more of the local newspapers of the borough and/or community within the borough where the services are provided. The notice shall also be mailed to the proposed provider and the Borough President(s) and Community Board chair(s) in the district(s)

where the services are provided, and shall be conspicuously placed on the premises of the location where services are provided, if practicable, and otherwise where the program is administered. The agency shall take other steps to solicit comments from clients, advocates, and others sufficiently in advance of the renewal date so that appropriate action can be taken to respond to issues identified in such comments.

(3) Contract Summary. Prior to providing public notice of the intent to renew a contract, the ACCO shall prepare a summary of the terms and conditions of the proposed renewal contract, including a description of the scope of services, the target population, the proposed renewal term of the contract, and the location of the program. The summary may be prepared for a category of contracts, accompanied by a detailed contractor/site specific schedule.

(4) Content of Public Notice. The public notice of intent to renew the contract shall include:

(i) the City agency name;

(ii) the name and address of the vendor;

(iii) PIN;

(iv) the address of the location where the services are provided, if practicable, and otherwise where the program is administered;

(v) a brief description of the nature of the services to be provided; and

(vi) the name and telephone number of the City agency staff member who can be contacted to provide a copy of the contract summary.

(e) Public Hearing Requirements. Renewal contracts shall be subject to public hearings for the purpose of eliciting information concerning the vendor's performance and other factors relevant to the renewal, unless:

(1) the renewal option to be exercised is in a contract where the original contract or any prior renewal option was subject to a public hearing, and the original contract term and all possible renewal options contained within the contract, were subject to such public hearing, or

(2) in exigent circumstances, in the case of contracts in value less than $10,000,000, the ACCO has made a determination justifying an exemption and that justification has been approved by the CCPO.

(f) Notice of Award. Notice of Award of a renewal contract shall be published in the City Record within fifteen days after registration of the renewal contract.

Section 4-05 QUALITY ASSURANCE, INSPECTION, AND TESTING.

The CCPO (in the case of construction and certain services), and the DCAS (in the case of goods and certain services as authorized in Chapter 59 of the Charter), shall take such steps as are deemed desirable to ascertain or verify that goods, services, or construction items procured by the Contracting Officer conform to specifications. In performing this duty, the CCPO and DCAS may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed. The CCPO and DCAS may delegate authority for inspection and testing to City agencies.

Section 4-06 PROMPT PAYMENT.

(a) Policy. It is the policy of the City of New York to process contract payments efficiently and expeditiously so as to assure payment in a timely manner to firms and organizations that do business with the City.

(b) Definitions. In this subsection, the following words have the meanings indicated.

Applicable Interest Rate. Interest shall be the maximum amount allowed by law or such lower uniform interest rate as may be set jointly by the Comptroller and OMB.

Designated Billing Office. The office or employee designated in the contract to which a proper invoice is to be submitted by a contractor.

Discount Date. The date by which, if payment is made, a specified invoice payment reduction, or discount, can be taken.

Invoice Received or Acceptance Date ("IRA Date") – Goods and Services.

(i) For purposes of determining a payment due date for goods and services and the date on which interest will begin to accrue and for no other purpose, an invoice received or acceptance date ("IRA date") is defined as the later of :

(A) the date a proper invoice is actually received by the designated billing office if the agency annotates the invoice with the date of receipt at the time of receipt, or

(B) the seventh day after either the date on which the goods are actually delivered or the services are actually performed, unless:

((a)) the agency has actually accepted and approved the goods or the services before the seventh day (in which case the acceptance date shall substitute for the seventh day after the

delivery or performance date), or

((b)) a longer acceptance period is required by law or included in the contract to afford the agency a practicable opportunity to inspect, test, and accept the goods or evaluate the services (in which case the date of actual acceptance or the date on which such longer acceptance period ends shall substitute for the seventh day after the delivery or performance date).

Invoice Received or Acceptance Date ("IRA Date") – Construction and Construction-Related Services. For construction, for purpose of determining a payment due date and the date on which interest will begin to accrue and for no other purpose, an invoice received or acceptance date ("IRA date") is defined as the date when the field engineer certifies on the payment requisition that the work has been accepted.

Proper Invoice. A written request for a contract payment that is submitted by a vendor in good faith setting forth the description, price, and quantity of goods or services delivered or rendered, in such form and supported by such documentation as an agency may require, and any other documents required by contract.

Required Payment Date or Interest Eligibility Date. The date by which a contract payment must be made in order for an agency not to become liable for interest payments.

Receiving Report. This report may be used by a receiving unit to inform others, such as the purchasing, warehousing, accounting, and quality assurance departments, of the receipt of goods purchased or acceptance of services rendered. A receiving unit may, in some cases, also verify that goods and services conform to specification requirements and may include on the receiving report evidence of the acceptance of the goods and services.

Retainage. The right of the City pursuant to a contract and/or law to withhold from the invoice and retain a specified percentage of payment until such time as it is to be released pursuant to the contract and/or law.

(c) Standards for Prompt Payment.

(1) Starting the Payment Period. The period available to an agency to make a timely payment of an invoice without incurring an interest penalty shall begin on the IRA date.

(2) Required Payment Date. The required payment date shall be:

(i) thirty days; or

(ii) in the case of contract changes, sixty days; or

(iii) in the case of substantial completion payments or final payments on construction contracts, sixty days after the IRA date, except as described in paragraph (3) below; or

(iv) except as provided in subdivision (d)(4)(iv), the required payment date for the release of retained amounts shall be in accordance with the contract and law, and thirty days after the submission of a proper invoice for the return of the retained amounts.

(3) Extension of the Required Payment Date. The date by which a contract payment may be made without the payment of interest may be extended by the time taken to satisfy or rectify any of the following:

(i) the Comptroller, in the course of an audit, determines that there is reasonable cause to believe that payment may not be properly due, in whole or in part, due to fault of the vendor;

(ii) the necessary City, State, or federal government appropriation required to authorize payment has not been made;

(iii) a proper invoice must be examined by the State or federal government prior to payment;

(iv) the goods have not been delivered or the construction or services have not been performed in compliance with the terms and conditions of the contract;

(v) in the case of substantial or final payments on construction contracts, the ACCO determines that the vendor has failed to properly submit the necessary documents and other submissions prescribed by the contract specifications and requirements or by law in order to enable the agency to process the final payment properly and expeditiously; and

(vi) when the required payment date falls on a weekend or City holiday, the required payment date shall be extended to the next following business day.

(4) Proper Invoice Required to Initiate Payment. A proper invoice submitted by the vendor shall be required to initiate payment, except where the contract provides that the vendor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

(5) Receipt and Acceptance of Goods and Services. Agencies shall ensure that receipt and acceptance are executed within seven days unless otherwise specified in the contract. Receiving reports and invoices shall be stamped or

otherwise annotated with the date upon receipt in the designated billing office.

(d) Interest Eligibility and Computation.

(1) Eligibility. When payments are made after the required payment date, interest shall be paid to the vendor based on the IRA date. Interest shall be computed at the maximum amount allowed by law, or such lower uniform rate set jointly by the Comptroller and OMB. Such interest rate shall not apply to contracts where, as part of the contract obligation, the City is required to pay an interest rate other than the rate determined by the Comptroller and OMB.

(2) The interest rate shall be reviewed every six months by the Comptroller and OMB to determine its continued applicability. The new interest rate for each upcoming six-month period, i.e., July 1 through December 31/January 1 through June 30, shall take effect on payments made on or after the effective date and shall be published by the CCPO in the City Record as soon as is practicable after such determination is made, not to exceed thirty days. The CCPO shall notify in writing all ACCOs of this action.

(3) Interest shall not be paid where:

(i) payment on the invoice is delayed because of a disagreement between an agency and a vendor over the amount of the payment and other issues concerning compliance with the terms of a contract. Payments shall be made, and as required by these Rules, interest shall be paid, on undisputed amounts;

(ii) the failure to make the contract payment is the result of a lien, attachment, or other legal process against the money due to the vendor;

(iii) amounts are temporarily withheld in accordance with the contract; or

(iv) the amount of the interest payment is less than twenty-five dollars.

(4) The following types of payments are ineligible for interest:

(i) payments under the eminent domain law;

(ii) payments to the federal government, to any state or City agency or their instrumentalities, to any duly constituted unit of local government or any of their related instrumentalities, to any public authority or public benefit corporation;

(iii) payment in a situation where the City takes a deduction permitted by law or contract against all or part of a payment due the vendor; or

(iv) where, for reasonable cause, the City determines not to release or to reduce retainage upon completion or substantial completion of a construction contract.

(5) Interest that is due shall be paid within twenty days of payment of the original invoice. The failure to make an interest payment within such twenty days shall not generate additional interest.

(6) The Comptroller and OMB may, for a limited period of time not to exceed thirty days per calendar year, jointly defer the City's obligation to pay interest when the City is experiencing a shortage of cash. In such event, the CCPO shall provide, at the earliest practicable opportunity, written notice to ACCOs of this action and its expected duration. Notice of this action shall be published by the CCPO in the City Record as soon as is practicable after such determination is made, not to exceed thirty days. The CCPO shall provide similar written notice of subsequent action either to extend or cancel this period of deferral.

(e) Additional Requirements for Construction and Construction-Related Services Contracts.

(1) Progress Payment. An agency may not approve a request for a progress payment unless the request includes:

(i) substantiation of the amounts requested, including:

(A) an itemized list of the amounts requested related to the various elements of work required by the contract;

(B) a listing of the amount included for work performed by each subcontractor under the contract;

(C) a listing of the total amount of each subcontract under the contract;

(D) a listing of the amounts previously paid to each such subcontractor under the contract; and

(E) additional supporting data in a form or detail required by the contract or the resident engineer;

(ii) certification by the prime contractor, that:

(A) the amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(B) payments to subcontractors and vendors have been made

from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of these Rules; and

(C) the application does not include any amounts that the prime contractor intends to withhold or retain from a subcontractor or vendor in accordance with the terms and conditions of their subcontract/agreement except as may be allowed.

(2) Subcontracts.

(i) All construction contracts awarded by the City shall include:

(A) a payment clause that obligates the prime contractor(s) to pay each subcontractor and vendor (including a materials vendor) not later than seven days after receipt of payment out of amounts paid to the contractor by the City for work performed by the subcontractor or supplier under that contract and that provides for the payment of interest by the prime contractor in accordance with Section 106-b of the New York State General Municipal Law on amounts not timely paid to a subcontractor, and

(B) a clause requiring the prime contractor to include in each of its subcontracts a provision requiring each subcontractor to include the same payment clause in their contracts with each lower-tier subcontractor or vendor.

(ii) If a prime contractor is paid interest earned due to late payments by an agency, the proportionate share of that interest shall be forwarded by the prime contractor to each of its subcontractors and vendors.

(f) Determination of Appropriations Against Which Interest Penalties Shall Be Charged. Except where otherwise required by law, an interest payment required by these Rules shall be paid from the agency expense budget of the agency awarding the contract, provided however that if the obligation to make an interest payment is incurred in whole or in part due to another agency's involvement in the payment process, then the portion of the total interest payment that is attributable to delays by that agency shall be charged to that agency's miscellaneous budget.

(g) Responsibilities. Each Agency Head is responsible for the following:

(1) assuring timely payments and the payment of interest penalties where required;

(2) publishing lists of designated agency contacts within their payment centers or finance offices to provide vendors with assistance in determining the status of

their invoices;

(3) issuing internal instructions, as necessary, to implement these Rules. Such instructions shall include provisions for monitoring the causes of any interest penalties incurred, taking necessary corrective or disciplinary action, and dealing with inquiries from vendors;

(4) assuring that effective control systems are established and maintained to provide reasonable assurance that administrative activities required under these Rules are effectively and efficiently carried out;

(5) assuring that inspectors general and internal auditors periodically review implementation, as they and their Agency Head deem appropriate. Copies of reports on audits and reviews should be provided to the CCPO and Comptroller upon issuance.

(6) establishing a quality control program to assess performance of payment systems and provide a reliable way to estimate payment performance.

(h) Reporting Requirements. PPB shall coordinate and publish an annual prompt payment performance report detailing each agency's performance pursuant to Charter Section 332. PPB shall additionally make cumulative prompt payment performance statistics available upon request. All reports shall be distributed to the CCPO, OMB, and Comptroller and shall be posted on the City's website in a location that is accessible by the public simultaneously with their publication.

(1) Report Contents. The annual prompt payment report shall contain the following information for both expense and capital expenditures:

(i) agency performance in descending order by percentage of on-time payments;

(ii) amount and percentage paid by the “Required Payment Date” or "Interest Eligibility Date" by agency in descending order as contrasted with the total amount eligible for payment;

(iii) distribution of interest penalties paid by agencies as a result of late payments; and

(iv) trend information as to how agencies are performing as compared with previous time periods, i.e., past year, past six months, quarter to quarter.

Section 4-07 BUY-AGAINST PROCUREMENTS.

(a) Policy. When a vendor fails to perform or defaults on an existing contract for

goods or services, and there is a continued need for the goods or services, an agency may obtain the required goods or services, as specified in the original contract, or any part thereof, from a successor vendor, pursuant to this section. In soliciting for the successor vendor, the ACCO shall obtain competition to the maximum extent practicable under the circumstances. Prior to the solicitation, the ACCO shall make a determination, including the basis thereof, that the method of source selection is in the best interest of the City. The method of source selection may include, but is not limited to, award to either the second lowest responsive and responsible bidder or next most advantageous proposer on the original solicitation at a price agreed upon between the bidder or proposer and the City. The term of a buy-against contract shall not exceed the balance of the term remaining on the original contract, without renewals, or such interval necessary to complete the original contract work as agreed upon by the ACCO and the vendor, whichever is longer. In addition, the ACCO shall, unless there are compelling mitigating circumstances, charge the non-performing vendor for any difference in price resulting from the buy-against contract, together with any administrative charge established by the agency, and shall, as appropriate, invoke such other sanctions as are available.

(b) Notice of Vendor Selection.

(1) Frequency. Notice of award of buy-against contracts shall be published once in the City Record, within fifteen days after registration of the contract.

(2) Content. Such notice shall include:

(i) Agency name;

(ii) Procurement Identification Number;

(iii) Title and/or brief description of the goods or services procured;

(iv) Name and address of the successor vendor and of the original vendor;

(v) Dollar value of the replacement contract; and

(vi) Summary determination of the basis for the buy-against procurement.

Section 4-08 COMPLETION OF CONTRACTS FOLLOWING DEFAULT OR TERMINATION FOR CAUSE OF CONSTRUCTION AND CONSTRUCTION-RELATED SERVICE CONTRACTS.

(a) Policy. The City may, as appropriate, default a contractor or terminate for cause in accordance with the terms of the contract and provide for timely completion of the work on a cost-effective basis. To that end, completion of the required work shall be accomplished in as expeditious and competitive a manner as practicable in accordance with these Rules.

(b) Definition. Completion contracts are contracts entered into by an agency with a vendor for completion of all or part of the work of a construction or construction-related service contract. Completion contracts shall not be considered new procurements.

(c) Application. Completion contracts shall be entered into pursuant to this section in cases where:

(1) the contractor has been defaulted or terminated for cause;

(2) there is no surety, or after a demand has been made by the agency, the surety either fails to perform its obligations in a timely manner or elects to tender a payment of funds as performance rather than completing the work, in accordance with its obligations; and

(3) there is a continuing need to complete all or part of the work.

(d) Completion Pursuant to Contract Terms and Conditions. The agency may, consistent with the guidelines set forth below, include provisions in construction and construction-related service contracts for completion contracts to be used in the event of default or termination for cause.

(1) The ACCO shall select from the following alternatives the most competitive alternative appropriate under the circumstances. The ACCO shall document the reasons that this is the most competitive alternative appropriate under the circumstances.

The following methods, in decreasing order of competitiveness may be used:

(i) solicitation of sealed bids through public notice. Notice of the availability of the IFB shall be publicly advertised at least once in the City Record. Individual notice to bidders in accordance with Section 3-02(e) of these Rules shall not be required, but the published notice shall contain all the information required by Section 3-02(e);

(ii) award to either the next lowest responsive and responsible bidder or next most advantageous responsive and responsible proposer on the original solicitation at a price agreed upon between the bidder or proposer and the City;

(iii) solicitation of sealed bids or proposals from a prequalified list prepared in accordance with Section 3-10 of these Rules;

(iv) solicitation of sealed bids or proposals from a Special Completion Contract Bidders or Proposers List. The ACCO may develop a list of available vendors competent to perform the completion contract and seek bids or proposals from at least three such vendors; or

(v) negotiation with one or more contractors or subcontractors on the site.

(2) For the purpose of soliciting a completion contract, the Contracting Officer shall make the following documentation available to prospective contractors:

(i) a copy of the original contract;

(ii) contract changes which have been approved or for which approval is pending;

(iii) available documentation and/or correspondence which would aid the prospective contractor's understanding of the status and complexity of the work;

(iv) payment history; and

(v) information regarding subcontractors utilized by the defaulted or terminated contractor and other prime contractors working on the project, if any.

(3) The Contracting Officer shall hold a walk-through of the site for prospective contractors, unless the ACCO determines that such a walk-through would not be beneficial.

(4) In the event of default, the agency shall take steps to charge the defaulted contractor and/or surety, as applicable, for any additional costs and expenses arising out of or related to the completion of the work, including, without limitation, any administrative costs and the cost of any required corrective work.

(e) Notification. The agency shall provide the following information to the Comptroller:

(1) the contract registration number;

(2) the name of defaulted contractor;

(3) the date of default and a copy of default notice;

(4) the completion contract source selection method utilized;

(5) the name of completion contractor; and

(6) a copy of the completion contract.

(f) Funding. The balance of the contract funds shall be utilized for the completion contract. In the event additional funds are required, the agency shall take steps to encumber the same.

(g) Notice of Award.

(1) Frequency. Notice of the award of a contract entered into pursuant to this section shall be published at least once in the City Record, within fifteen calendar days after registration of the contract.

(2) Content. Such notice shall include:

(i) agency name;

(ii) PIN;

(iii) title and/or brief description of the completion contract and reason for default of the contractor or termination for cause of the original contract;

(iv) name and address of the replacement contractor and name and address of the original contractor;

(v) dollar value of the replacement contract(s); and

(vi) summary determination of the basis for the completion contract.

(h) Documentation. Documents reflecting the agency determination to default the contractor or terminate for cause shall be maintained and copies of these documents shall be sent to the CCPO for inclusion in the VENDEX database.

Section 4-09 RESOLUTION OF DISPUTES ARISING OUT OF CONTRACT ADMINISTRATION.

(a) Applicability. Except as provided in (1) and (2) below, this section shall apply to all disputes between the City and a vendor that arise under, or by virtue of, a contract between them. All contracts shall include a clause providing that all such disputes shall be finally resolved in accordance with the provisions of this section. Parties to contracts that do not contain this clause may by written agreement consent to the resolution of any disputes pursuant to this section.

(1) This section shall not apply to disputes concerning matters dealt with in other sections of these Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

(2) For construction and construction related services, this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or

disputed work performed in connection with the contract, the conformity of the vendor's work to the contract, and the acceptability and quality of the vendor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Agency Head under the contract (as defined in the contract) makes a determination with which the vendor disagrees. For construction, this section shall not apply to termination of the contract for cause or other than for cause.

(b) General Provisions. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.

(c) Work to Continue. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in force and, unless otherwise directed by the ACCO or Engineer, work shall continue as directed. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of its claim.

(d) Presentation of Dispute to Agency Head.

(1) Notice of Dispute and Agency Response. The vendor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified by the contract or, if no time is specified, within thirty days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the vendor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the vendor in the dispute was arrived at. Within thirty days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction related services, the Engineer, Resident Engineer, Engineering Audit Officer, or designee of the Agency Head under the contract, as applicable, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the vendor to produce any requested material whose relevancy the vendor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the vendor of its claim.

(2) Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the vendor and the ACCO and, in the case of construction or construction related services, the

Engineer, Resident Engineer, Engineering Audit Officer, or designee of the Agency Head under the contract, as applicable, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other vendor with a contract related to that of the party presenting the dispute, and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the vendor initiating the dispute.

(3) Agency Head Determination. Within thirty days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the vendor and ACCO and, in the case of construction or construction related services, the Engineer, Resident Engineer, Engineering Audit Officer, or designee of the Agency Head under the contract, as applicable, together with a statement concerning how the decision may be appealed.

(4) Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the CDRB pursuant to this section. The City may not take a petition to the CDRB. However, should the vendor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the vendor and more favorable to the City than the decision of the Agency Head.

(e) Presentation of Dispute to the Comptroller. Before any dispute may be brought by the vendor to the CDRB, the vendor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

(1) Time, Form, and Content of Notice. Within thirty days of receipt of a decision by the Agency Head, the vendor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute; the amount of money, if any, claimed; and the reason(s) the vendor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the vendor to the agency, including the Notice of Dispute. The vendor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

(2) Agency Response. Within thirty days of receipt of the Notice of Claim,

the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the Comptroller any material not presented to the Agency Head except at the request of the Comptroller.

(3) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the vendor. Willful failure of the vendor to produce within fifteen days any material requested by the Comptroller shall constitute a waiver by the vendor of its claim. The Comptroller may also schedule an informal conference to be attended by the vendor, agency representatives, and any other personnel desired by the Comptroller.

(4) Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five days from his or her receipt of all materials referred to in (e)(3) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the vendor and the Comptroller, to a maximum of ninety days from the Comptroller's receipt of all materials. The vendor may not present its petition to the CDRB until the period for investigation and compromise delineated in this section has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

(f) Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

(1) the chief administrative law judge of OATH or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

(2) the CCPO or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

(3) a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

(g) Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the vendor, within thirty days thereafter, may petition the CDRB to review the Agency Head determination.

(1) Form and Content of Petition by Vendor. The vendor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute; the amount of money, if any, claimed; and the reason(s) the vendor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the vendor to the agency; (iv) a copy of the decision of the Comptroller, if any; and (v) copies of all correspondence with, and material submitted by the vendor to, the Comptroller's Office. The vendor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the vendor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

(2) Agency Response. Within thirty days of receipt the Petition by the Corporation Counsel, the agency shall respond to the statement of the vendor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency response shall be submitted to the CDRB at OATH's offices and one to the vendor. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty days.

(3) Further Proceedings. The Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the vendor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the agency's case. Neither the vendor nor the agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on it own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

(4) CDRB Determination. Within forty-five days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not

before the CDRB.

(5) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction related services, the Engineer. A decision in favor of the vendor shall be subject to the prompt payment provisions of these Rules. The Required Payment Date shall be thirty days after the date the parties are formally notified of the CDRB's decision.

(6) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with this section.

(h) Final Decision Not Impaired by Contract Termination. Any termination, cancellation, or alleged breach of the contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this section.

Section 4-10 DEBARMENT AND SUSPENSION.

(a) Applicability. It is the policy of the City that vendors are not subject to debarment pursuant to these Rules and agencies may not debar vendors based on the grounds set forth in this section. The activities and conduct indicated to be grounds for debarment listed in this section, however, are specifically referenced in City construction contracts as grounds for default. So as not to disturb the effect of those contract provisions with respect to default, the listing of the grounds for debarment shall remain in these Rules, although agencies may not use such grounds to institute a debarment proceeding.

(b) Grounds for Debarment.

(1) Grounds for debarment include the following acts or omissions on the part of the vendor or any of its officers, directors, partners, five percent shareholders, principals, or other person substantially involved in its activities:

(i) indictment or conviction under any state or federal law of any of the following except that indictment alone may be a cause for debarment only for such time as the indictment continues:

(A) a criminal offense incident to obtaining or attempting to

obtain or performing a public or private contract;

(B) fraud, embezzlement, theft, bribery, forgery, falsification or destruction of records, or receiving stolen property;

(C) a criminal violation of any state or federal antitrust law;

(D) violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. section 1961 et seq, or the Mail Fraud Act, 18 U.S.C. section 1341 et seq, for acts in connection with the submission of bids or proposals for a public or private contract;

(E) conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (D) above; or

(F) an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor;

(ii) judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(iii) arrears on any debt or contract with the City or any agency, default as surety or otherwise upon any obligation to the City or any agency, or arrears for taxes;

(iv) violation of contract provisions, as set forth below:

(A) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract, or

(B) unsatisfactory performance in connection with the terms of one or more contracts;

(v) an agency determination of non-responsibility or debarment by another governmental entity or public authority;

(vi) violation of the provisions of Section 1304 or 1305 of the Charter or any rule promulgated pursuant thereto;

(vii) making or causing to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for City or other government work;

(viii) use of unauthorized subcontractors;

(ix) refusal to cooperate with reasonable requests of City inspectors and representatives with respect to work under the contract provisions, plans, or specifications;

(x) improper conduct, including but not limited to, intentional or grossly negligent billing irregularities, submitting false or frivolous or exaggerated claims, falsification of documents or records, willful destruction of documents or records the vendor had an obligation to maintain, bribery, use of false or deceptive statements to obtain some benefit, causing competition to be restrained or limited, misrepresentation, falsely claiming to be a minority- or woman-owned or small business, violation of ethical standards established by the City, and other dishonesty incident to obtaining, prequalifying for, or performing any contract or modification thereof; or

(xi) any other cause sufficiently serious and compelling that a reasonable person would seriously doubt the capability of the vendor to perform City procurement requirements.

(2) A vendor may also be debarred if:

(i) it was founded or established, or operates in a manner designed, to evade the application or defeat the purpose of these Rules, or

(ii) it is a successor, assignee, subsidiary, or affiliate of a suspended or debarred vendor.

(3) Imputed Conduct.

(i) The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a vendor may be imputed to that vendor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the vendor or with the vendor's knowledge, approval, or acquiescence. The vendor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(ii) The fraudulent, criminal, or other improper conduct of a vendor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with that vendor who participated in, knew of, or had reason to know of the vendor's conduct.

(iii) The fraudulent, criminal, or other seriously improper conduct of one vendor participating in a joint venture or similar arrangement may be imputed to the other participating vendors if the conduct occurred for or on behalf of the joint venture or other similar arrangement, or with the knowledge, approval, or acquiescence of these vendors. Acceptance of

the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(c) Suspension.

(1) An agency petitioning OATH for the debarment of a vendor or having knowledge of facts that may form the basis of such a petition may in its exclusive discretion suspend such vendor from consideration for the award of any procurement with the City. The decision to suspend a vendor shall be made by the ACCO and shall not be delegated.

(2) A suspension shall be effective for no longer than three months, except that delay of a debarment proceeding that is caused by a suspended vendor shall be deemed to be consent by that vendor to an extension of the suspension beyond the three-month maximum. The period of such extension shall be equal to the period of such delay caused by the vendor. When an issue regarding delay is raised by either party or the administrative law judge, the vendor shall bear the burden of demonstrating that the delay was not caused by the vendor.

(3) Appeal. All suspensions may be appealed as set forth herein.

(i) Time Limit. A vendor shall have ten days from receipt of the agency's notification to file a written appeal with the Agency Head. Receipt of notice by the vendor shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Agency Head.

(ii) Form and Content. The appeal shall be in writing and shall briefly state all the facts or other basis upon which the vendor contests the suspension. Supporting documentation, if any, shall be included.

(iii) Determination. Solicitation, award, or performance of a procurement shall not be delayed, except at the discretion of the Agency Head, because of an appeal filed pursuant to this section. The Agency Head shall consider the appeal and shall make a prompt written decision with respect to its merits, a copy of which shall be sent to the vendor. The Agency Head's decision shall be final. The Agency Head may not delegate the authority to make a decision on the appeal to the ACCO.

(d) Hearing Procedure for Debarment.

(1) The proceedings shall be conducted in accordance with the rules of OATH. The hearing shall be limited to the allegations and other issues placed in controversy by the pleadings.

(2) The vendor shall file an answer within the time provided by the rules of OATH. The answer shall include an admission, denial, or other response to each

of the allegations in the petition, and the omission of such a response to any allegation in the petition shall be deemed an admission of that allegation. Should the vendor fail to file a timely answer to the petition, all of the allegations of the petition shall be deemed to be admitted, and the hearing shall be limited to submissions and argument concerning the scope and period of the debarment to be imposed.

(3) At any time before any debarment, the vendor and the petitioning agency may enter into an informal disposition agreement relating to the debarment.

(e) Scope of Sanctions.

(1) OATH may, in debarring a vendor, disqualify that vendor from being awarded a procurement, performing as a subcontractor, providing supplies for a procurement, and/or exercising a renewal option. OATH may impose such sanctions upon the vendor's activities with a single agency or any combination of agencies, and to a single type of procurement or any combination of procurement types. The period of debarment, including any suspension pending OATH's decision, may not exceed five years. In determining the scope or period of a vendor's debarment, OATH may impose such conditions on the vendor's City activities as it considers appropriate, including, but not limited to, monitoring of the vendor's future procurement activities with the City.

(2) At the time of debarment, or at any time thereafter, any Agency Head may exercise the City's right to terminate for convenience an existing contract between that agency and the debarred vendor, or may prohibit any modification, extension, or renewal of any such contract. In such case, the vendor shall be entitled to receive only payment for the work performed until that point.

(f) Notice.

(1) The agency shall forward copies of all documents required or permitted by this section to OATH, Corporation Counsel, the CCPO, the Comptroller, DOI, and the PPB. The CCPO shall include all pertinent information in the VENDEX database.

(2) A list of vendors currently suspended or debarred, including a summary of the scope of the suspension or debarment, shall be published monthly in the City Record by the CCPO. This list shall include the following information:

(i) the name of the vendor and its principals;

(ii) the name of the agency that initiated the debarment proceeding and/or that suspended the vendor;

(iii) the effective date and scope of the debarment or suspension; and

(iv) the termination date of the debarment.

Section 4-11 HEARINGS ON BOROUGH PRESIDENT COMPLAINTS.

(a) Borough President Contract Evaluation. A Borough President may receive information concerning the delivery of services in the borough pursuant to a contract with the City or an agency of the City.

(b) Finding by Borough President. If a Borough President determines there is reason to believe a term or condition of a contract providing for the delivery of services in the borough is not being complied with, he or she shall set forth in writing the facts which form the basis of that determination, and shall state a recommendation concerning whether one of the following courses of action should be taken by the agency administering the contract:

(1) the contract should be terminated for noncompliance;

(2) the terms and conditions of the contract should be modified prior to the expiration of its term where the contract provides for such modification or the contractor consents;

(3) the contract should be allowed to continue in effect during its term, but should not be renewed upon the expiration of its term;

(4) the contract should be allowed to continue in effect during its term, but the terms and conditions of the contract should be modified at the time of renewal; or

(5) the existing terms of the contract should be enforced in some manner by the agency administering the contract.

(c) Transmittal of Determination. The Borough President shall transmit to the Agency Head of the agency administering the contract a copy of the determination and recommendation made pursuant to subdivision 4-11(b) above.

(d) Time Period for Recommendation Affecting Renewal of Contract. In the case of a recommendation that a contract should not be renewed or should be modified at the time of renewal, such recommendation shall be made to the Agency Head at least one hundred and twenty days prior to the expiration of the contract.

(e) Agency Head Response. The Agency Head shall make a written response to the Borough President's findings and recommendation within ten days from receipt of such findings, indicating what action, if any, shall be taken by the agency.

(f) Contract Performance Panel Hearing. If action determined by the Agency Head is not satisfactory to the Borough President, the Borough President may, within thirty days of receipt of such response, require that a hearing be held in the borough pursuant to this subdivision.

(1) Within ten days of receipt of the Agency Head response, the Borough President shall deliver to the Public Advocate, the Comptroller, and the Mayor, a demand that a hearing in the borough be held on the subject of the contract. The Borough President shall fix a time and place within the borough for a hearing on the subject.

(2) Within ten days of submission of the demand of the Borough President, the Public Advocate, the Comptroller, and the Mayor shall designate persons to receive the testimony of the Borough President and other interested persons on the Borough President's recommendations.

(3) Unless otherwise agreed to by the Borough President, the hearing shall be held within twenty days from receipt of the demand of the Borough President.

(4) The Agency Head which procured the services in question, or a designee of such Agency Head, and the contractor whose performance is being evaluated, shall have the right, and it shall be their duty when requested by the panel, to appear and be heard.

(5) The hearing shall be open to the public, and there shall be an audiotape or transcript made of the proceedings.

(6) The hearing may be continued from day to day as deemed necessary and appropriate in the discretion of the panel. It shall be the panel's duty to ensure that the hearing is expeditious and not unduly prolonged and in no event shall the hearing continue past the fortieth business day after receipt of the Borough President's demand for a hearing.

(g) Panel Recommendations. Within thirty days of the conclusion of such hearing, the panel shall make a determination recommending such action as it deems appropriate. The panel shall promptly deliver its recommendation in writing to the Agency Head, Borough President, and contractor.

(h) Agency Head Response. Within thirty days of receipt of the panel's recommendation, the Agency Head shall respond in writing to the panel and the Borough President, indicating which, if any, of the panel's recommendations shall be acted upon and what, if any, alternative action will be taken.

(i) Multiple Borough President Complaints. In the case of any contract as to which more than one Borough President has submitted a determination in accordance with subdivision (b) of this section, the agency receiving such determinations shall provide to each such Borough President a copy of the agency response submitted in accordance with subdivision (e) of this section. If more than one Borough President in such a case shall demand a hearing, only one hearing shall be held, at a time and place to be determined by the Borough Presidents. If a hearing is held, it shall include the comments of all such Borough Presidents.

Section 4-12 LATE REGISTRATION.

(a) Policy.

(i) No contract shall be implemented until the procedures set forth in Charter § 328 have been followed.

(ii) In the circumstance wherein an expiring contract for client services is to be replaced by a new contract awarded from an RFP pursuant to Section 3-03 or via HHS Accelerator pursuant to Section 3-16, renewed pursuant to Section 4-04 or extended pursuant to Sections 3-04(b)(2)(iii) or 4-02(b)(1)(iii), the agency should notify the selected vendor of its selection by no later than ninety (90) days prior to the expiration date of the contract that is to be replaced, renewed or extended. Earlier notification is preferable, particularly where the agency anticipates that the vendor will be required to file a new VENDEX questionnaire pursuant to Section 2-08(e)(2). In addition, where an agency proposes to continue services by means of a new RFP award, the Notice of Solicitation for such RFP should be published by the agency pursuant to Section 3-03(d), or by the HHS Accelerator Director pursuant to Section 3-16(b)(1), by no later than two hundred fifty (250) days prior to the expiration of the contract(s) to be replaced.

(b) Timeliness of Submission for Registration.

(i) The provisions of this subdivision shall apply to client service contracts and extensions: contracts awarded by negotiated acquisition where there is a compelling need to extend the contract one or more times beyond the cumulative twelve-month limit, pursuant to Section 3-04(b)(2)(iii); contracts for which no public hearing is required pursuant to these Rules because they do not differ materially in terms and conditions from contracts currently held by the City where the parties to such contracts are the same, pursuant to Section 2-11(b)(3); extensions of contract terms for a cumulative period not to exceed one year, pursuant to Section 4-02(b)(1)(iii); and renewal contracts, pursuant to Section 4-04. Notwithstanding the above, contracts awarded pursuant to Section 1-02(e) shall not be subject to the provisions of this subdivision.

(ii) Any agency that submits such a contract or extension to the Comptroller for registration after the start date of such contract shall be deemed to have submitted the contract in an untimely manner, unless the ACCO determines that the vendor's conduct constituted a material cause of such late submission. The ACCO shall not make such a determination against a vendor unless the agency met the timely notification set forth in subdivision (a)(ii) above, i.e., by notifying the vendor at least ninety (90) days prior to the expiration of the contract to be replaced.

(c) Substantial Compliance. The CCPO shall review each agency's performance under this Section at least twice each year. Any agency that the CCPO determines is generally

submitting contracts in an untimely manner as defined in this Section, i.e., is not in substantial compliance with the provisions of subdivision (b) of this Section, shall be required to make interest payments in accordance with subdivision (d) for any subsequent contracts that are submitted to the Comptroller for registration in an untimely manner. The CCPO may, upon application of an agency previously determined not to be in substantial compliance with the provisions of this Section, review the agency's intervening performance, and may determine that the agency is now in substantial compliance with the provisions of this Section. An agency shall not be required to make late registration payments for contracts entered into by the agency subsequent to such a determination.

(d) Interest Payments.

(i) An agency required to make interest payments under this Section shall make them for the period commencing thirty (30) days after the start date of the contract and ending with the date the contract is registered. Interest payments shall be made only to reimburse the vendor for interest actually incurred by the vendor pursuant to a loan taken out by the vendor; where such loan was used and interest incurred because of the untimely registration of a contract. The rate at which such interest is reimbursed shall not exceed the maximum rate allowed by law or the rate set jointly by the Comptroller and OMB pursuant to Section 4-06, whichever is lower. The amount of the loan on which the interest payments are based shall not be greater than the amount due under the contract prior to registration. No interest shall be paid if the vendor had been previously offered an interest-free loan in connection with the contract in question, but declined to accept it.

(ii) The Comptroller and OMB may, for a limited period of time not to exceed thirty days per calendar year, jointly defer the City's obligation to pay interest when the City is experiencing a shortage of cash. In such event, the CCPO shall provide, at the earliest practicable opportunity, written notice to ACCOs of this action and its expected duration. Notice of this action shall be published by the CCPO in the City Record as soon as is practicable after such determination is made, not to exceed thirty days. The CCPO shall provide similar written notice of subsequent action either to extend or cancel this period of deferral.

(iii) Except where otherwise required by law, an interest payment required by these Rules shall be paid from the agency expense budget of the agency awarding the contract, provided however that if the obligation to make an interest payment is incurred in whole or in part due to another agency's involvement in the procurement process, then the portion of the total interest payment that is attributable to delays by that agency shall be charged to that agency's miscellaneous budget.

Section 4-13 SUBCONTRACTS.

(a) Policy. Consistent with the terms of the contract, a vendor may enter into subcontracts where the contracting agency approves. The City has an interest in ensuring that all

City work is performed by appropriate persons.

(b) Form. All subcontracts made by the vendor shall be in writing. A vendor shall not be entitled to payment for any work performed by a subcontractor prior to the vendor entering into a written subcontract with the subcontractor and complying with the provisions of this section.

(c) Approval. All subcontractors must be approved by the agency prior to commencing work under the subcontract.

(d) Approval Process.

(1) Before entering into any subcontracts, the vendor shall submit a written statement to the agency giving the name and address of the proposed subcontractor, the portion of the work and materials that the subcontractor is to perform and furnish, and the estimated cost of the subcontract.

(2) Upon receipt of the above, the agency in its discretion may grant or deny preliminary approval for the vendor to contract with the subcontractor.

(3) The Agency shall notify the vendor within thirty days whether preliminary approval has been granted. If preliminary approval is granted the vendor shall provide such documentation as may be requested by the agency to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, as applicable, but not limited to:

(i) Completed VENDEX questionnaires, if and as required under Rule 2-08(e);

(ii) References;

(iii) Licenses;

(iv) Documentation that the subcontractor has been certified by DSBS as a minority-owned, women-owned or emerging business enterprise.

(4) Upon receipt of all relevant documentation, the agency shall notify the vendor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the vendor may submit another proposed subcontractor unless the vendor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the agency.

(e) Change of Subcontractor. For construction contracts where a list of subcontractors has been submitted in accordance with Section 3-02(b)(2)(xx)(J) of these Rules, any change of subcontractor or agreed-upon amount to be paid to a subcontractor shall require the approval of the City upon a showing of a legitimate construction need for such change. A

legitimate construction need shall include, but not be limited to, a change in project specifications, a change in construction material costs, a change to subcontractor status as determined to Section 222 (2)(e) of the New York State Labor Law, or the subcontractor has become otherwise unwilling, unable or unavailable to perform the subcontract. Documents relating to the City's approval of changes of subcontractors pursuant to this subdivision shall be open to public inspection.

(f) Payment. Payment to subcontractors shall be made in accordance with Section 4-06(e)(2) of these Rules.

(g) Privity. The approval by the City of a subcontractor shall not establish privity between that subcontractor and the City or relieve the vendor of any obligations under the contract.

APPENDIX A- SUMMARY CHART OF ALL PPB CHANGES SINCE APRIL 2010

No.	Section No.	Subject	Effective Date	Summary Description
1.	2-08; 3-08	VENDEX Administrative Fee.	7/01/2010	Provides for an administrative fee to be charged to prime vendors and subcontractors for vendor name checks to defray the cost of the City's VENDEX system and the Vendor Name Check process.
2.	4-08	Surety Bond Language.	7/01/2010	Conforms the rule to the performance bond language by allowing an agency to enter into a completion contract after default of a contractor when a surety elects to tender payment of a penal sum, as well as when the surety fails to perform its obligations under the bond.
3.	1-01	Definitions.	7/1/2013	Provides definitions for standard services", "human services", and "professional services". These definitions are needed in light of changes to the State law that allow the City to award contracts on the basis of the Best Value (Best Value Law). The definition for "multi-step sealed bidding" is also deleted because due to the Best Value Law, this process has been repealed.
4.	2-07	Responsiveness.	7/1/2013	Allows agencies to waive findings of non-responsiveness and award a contract to an otherwise non-responsive bidder as long as the agency concludes that such a waiver would not deprive the agency of the assurance that the contract will be performed according to its specified requirements and would not adversely affect the competition.
5.	2-11	Best Value Public Hearing Requirements.	7/1/2013	Requires a public hearing where contracts are to be awarded by competitive sealed bidding on the basis of best value to the City.

No.	Section No.	Subject	Effective Date	Summary Description
6.	3-01	Best Value Method of Source Selection Policy.	7/1/2013	Requires agencies to make a special case determination where contracts are to be awarded by competitive sealed bidding on the basis of best value to the City.
7.	3-02	Best Value Competitive Sealed Bidding.	7/01/2013	Sets forth the rules governing competitive sealed bids for the purchase of goods and standard services to be awarded on the basis of best value to the City. Best value is defined in terms of the optimization of quality, cost and efficiency.
8.	1-01	Best Value Competitive Sealed Proposals.	7/1/2013	Sets forth the rules governing the purchase of goods and standard services through competitive sealed proposals. Requires awards based on competitive sealed proposals to be made based on the best value to the City. Best value is defined in terms of the optimization of quality, cost and efficiency.
9.	2-07	Micropurchases.	7/1/2013	The amendment increases the dollar amount below which procurement and award of contracts may be made without competition from $5,000 to $20,000.
10.	2-11	Best Value Evaluation and Documentation of Vendor Performance.	7/1/2013	Requires performance evaluations for goods procured by competitive sealed bids and awarded on the basis of best value to the City.

No.	Section No.	Subject	Effective Date	Summary Description
11.	1-01, 2-04, 2-08, 2-09, 3-01, 3-10, 3-16, 4-12	HHS Accelerator.	12/27/2013	Define functions of HHS Accelerator and authority of the HHS Accelerator Director; Establish the HHS Accelerator Rule as the default procurement method for client service contracts except as otherwise provided in the rule; Set forth the policy and criteria governing the prequalification of vendors through HHS Accelerator, including a method for a vendor to appeal denial of prequalification through HHS Accelerator; Establish a process for soliciting proposals from prequalified vendors through HHS Accelerator.
12.	1-01	Investment Managers.	12/27/2013	Leverage existing financial databases and the analytical resources of the Systems investment consultants to increase competition and expand the universe of managers that may be considered for retention by the Systems; Increase the pool of top tier investment management firms to invest the System's assets by establishing a process whereby all qualified investment managers are considered for possible contract award; Reduce the time it takes to complete the procurement process by eliminating the need to review and evaluate large numbers of proposals regardless of performance ranking and instead allow the investment staff working on behalf of the Systems to concentrate its evaluation on the highest performers, as determined through industry wide assessments and sophisticated analytics performed by the Systems' consultants.

No.	Section No.	Subject	Effective Date	Summary Description
13.	2-09	Best Value in Recommendation for Award	12/27/2013	PPB Rule 2-09 sets forth the requirements for the Recommendation for Award prepared by the agency's contracting officer. In light of recent amendments to PPB Rules, 9 RCNY §§ 3-02 and 3-03, which give agencies the option to award goods and standard services based on best value to the City instead of lowest bidder, the amendment to Rule 2-09 adds the requirement that the Recommendation for Award set forth the criteria used in determining best value if an award is made to a bidder whose bid represents the best value to the City.
14.	3-05	Sole Source Procurement Threshold	12/27/2013	Rule 3-05 is also being amended to provide that, for all procurements subject to Rule 3-05, the Agency Chief Contracting Officer ("ACCO") must provide a description of the process used to determine that only one source was available; a description of the efforts made to ensure that offers were solicited from other sources; where applicable, a statement of intended actions to develop competition in the future; and must perform a presolicitation review. Previously, some of these requirements only applied to procurements above specified monetary thresholds ($10,000 or less for goods and services and $15,000 or less for construction and construction-related services).
15.	Definitions	M/WBE	3/1/2016	Amendment to clarify the definition of an M/WBE as per Local Law 1 of 2013. Clarification will avoid any confusion about other similar certifications for M/WBEs.

No.	Section No.	Subject	Effective Date	Summary Description
16.	2-07, 2-08, 3-02, 3-03, 3-10, 3-16	Bureau of Contract Administration	3/1/2016	Amendment to update the name and address for the Bureau of Contract Administration within the Office of the New York City Comptroller. The changes ensure that submissions required to be made by the rules are sent to the correct address.
17.	3-02	Best Value Competitive Sealed Bids	3/1/2016	Rule 3-02 was amended to establish requirements for implementing quantitative factors for M/WBEs when evaluating bids for awarding of contracts. If award will be made based on best value, a certified M/WBE in a group for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code must, except with the permission of the CCPO, be given a price preference of 10% and will be evaluated as if the bid price were 10% lower.
18.	3-03	Best Value Competitive Sealed Proposals	3/1/2016	Rule 3-03 was amended to establish requirements for implementing quantitative factors for M/WBEs when evaluating offers for awarding of contracts. If award will be made base on best value, proposals submitted by certified M/WBEs in a group for which there is a goal established pursuant to section 6-129 of the New York City Administrative Code must, except with the permission of the CCPO, be provided one of following quantitative preferences, as determined by the ACCO: (1) ten percent (10%) of the total technical points; or (2) if such proposal's score was above a minimum threshold for quality on the weighted criteria as established in the solicitation, either a price preference of ten percent (10%) or a point preference of ten percent (10%) of the total technical points in the evaluation of its proposal, as to be determined by the ACCO.

No.	Section No.	Subject	Effective Date	Summary Description
19.	3-04	Investment Services	3/1/2016	Rule 3-04 was amended to 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 management services to such system under an emerging manager program.
20.	3-06	Emergency Procurements	3/1/2016	Rule 3-06 was amended to require agencies to provide the New York City Council with the written determination of the basis for each emergency procurement and the selection of the contractor within fifteen days after contract award as required by Section 315 of the New York City Charter.
21.	3-08	Micropurchases	3/1/2016	Rule 3-08 was amended to increase the dollar amount below which procurement and award of contracts for construction can be made without competition from $20,000 to $35,000, in order to increase micropurchase awards to M/WBEs.
22.	4-03	Extension of Time for Performance	3/1/2016	Rule 4-03 was amended to permit all services contracts and task orders under task order contracts to be extended pursuant to the rule.
23.	3-02, 3-03	Public Notice	7/1/2016	Amendment to require agencies to email invitations for bids (IFBs), requests for proposals (RFPs) or notices of their availability to vendors unless a written request to receive such IFBs, RFBs or notices of their availability by mail, fax, hand delivery, or otherwise is approved by the City Chief Procurement Officer. Amendment also requires IFBs, RFPS or notices of their availability to include the email address of the agency contact person, if applicable.

APPENDIX B- NEW YORK CITY CHARTER

CHAPTER 13
PROCUREMENT

§ 310. **Scope.**

Except as otherwise provided in this charter or by statute,

1. all goods, services or construction to be paid for out of the city treasury or out of moneys under the control of or assessed or collected by the city shall be procured as prescribed in this chapter; provided, however, that for (i) the office of an independently elected city official, or (ii) the council, where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred thirty-four, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken respectively, by (i) by such elected official or (ii) the speaker of the council, or another member of the council designated by the speaker with the approval of a majority of the members of the council, and

2. all goods, services or construction to be procured by an entity, the majority of the members of whose board are city officials or are individuals appointed directly or indirectly by city officials shall be procured as prescribed in this chapter; provided, however, that where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred thirty-four, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken by the governing board of such entity or by the chair of the board or chief executive officer of such entity pursuant to a resolution adopted by such board delegating such authority to such officer.

§ 311. **Procurement Policy Board.**

a. There shall be a procurement policy board consisting of five members, three of whom shall be appointed by the mayor and two of whom shall be appointed by the comptroller. Each member shall serve at the pleasure of the appointing official. Members shall have demonstrated sufficient business or professional experience to discharge the functions of the board. At least one member appointed by the mayor and one member appointed by the comptroller shall not hold any other public office or public employment. The remaining members shall not be prohibited from holding any other public office or employment provided that no member may have substantial authority for the procurement of goods, services or construction pursuant to this chapter. The mayor shall designate the chair.

b. The board shall promulgate rules as required by this chapter, including rules establishing:

1. the methods for soliciting bids or proposals and awarding contracts, consistent with the provisions of this chapter;

2. the manner in which agencies shall administer contracts and oversee the performance of contracts and contractors;

3. standards and procedures to be used in determining whether bidders are responsible;

4. the circumstances under which procurement may be used for the provision of technical, consultant or personal services, which shall include but not be limited to, circumstances where the use of procurement is (a) desirable to develop, maintain or strengthen the relationships between non-profit and charitable organizations and the communities where services are to be provided, (b) cost-effective, or (c) necessary to (i) obtain special expertise, (ii) obtain personnel or expertise not available in the agency, (iii) to provide a service not needed on a long-term basis, (iv) accomplish work within a limited amount of time, or (v) avoid a conflict of interest;

5. the form and content of the files which agencies are required to maintain pursuant to section three hundred thirty-four and such other contract records as the board deems necessary and appropriate;

6. the time schedules within which city officials shall be required to take the actions required by this chapter, sections thirteen hundred four and thirteen hundred five, or by any rule issued pursuant thereto, in order for contracts to be entered into, registered or otherwise approved, and time schedules within which city officials should take action pursuant to any other provision of law or rule regarding individual contracts, which rules shall specify the appropriate remedies, including monetary remedies, for failure to meet the terms of any applicable schedule for taking such actions. The board may set forth exceptions to these rules. The promulgation of rules defining time schedules for actions by the division of economic and financial opportunity of the department of small business services and the division of labor services of such department shall require the approval of each division, as such rules pertain to actions required of such divisions, prior to the adoption of such rules by the procurement policy board;

7. procedures for the fair and equitable resolution of contract disputes; and

8. rules relating to the making of small purchases in a manner that will advance the purposes of the program for minority- and women-owned business enterprises and emerging business enterprises established pursuant to subdivision b of section thirteen hundred four.

9. such other rules as are required by this chapter.

c. The board may promulgate such additional rules, policies and procedures consistent with and as may be necessary to implement the provisions of this chapter. The board shall annually review all of its rules, policies and procedures and make such revisions as the board deems necessary and desirable. Nothing herein shall prevent the board from reviewing its rules, policies, and procedures, and making such revisions as the board deems necessary and desirable, more than once per year.

d. The board shall promulgate rules to facilitate the timely and efficient procurement of client services, and to ensure that such contracts are administered in the best interests of the city. Such rules shall include but not be limited to: (i) rules authorizing city agencies to meet annual financial audit requirements through the acceptance of consolidated audits across multiple contracts and multiple agencies; (ii) rules providing for expedited renewal or extension of existing client services contracts; (iii) rules mandating the promulgation of draft and final contract plans by all agencies procuring client services.

e. The board shall submit an annual report to the mayor, comptroller, and council setting forth the professional standards for agency contracting officers adopted by the mayor, including any applicable certification process.

f. In the promulgation of any rules pertaining to the procurement of construction or construction related services, the board shall consult with any office designated by the mayor to provide overall coordination to the city's capital construction activities.

g. The board shall make such recommendations as it deems necessary and proper to the mayor and the council regarding the organization, personnel structure and management of the agency procurement function including, where appropriate, recommendations for revision of this charter or local laws affecting procurement by the city. Such reports may include recommendations regarding agency use of advisory groups to assist in preparation of bids or proposals and selection of contractors. The board shall also review the form and content of city contract documents and shall submit to the law department recommendations for standardization and simplification of contract language.

h. The board shall not exercise authority with respect to the award or administration of any particular contract, or with respect to any dispute, claim or litigation pertaining thereto.

§ 312. **Procurement; general rule and exceptions.**

a. Prior to entering into, renewing, or extending a contract valued at more than two hundred thousand dollars to provide standard or professional services, including agency task orders pursuant to multi-agency task order contracts, but excluding emergency procurements, government-to-government purchases, and the procurement of legal services or consulting services in support of current or anticipated litigation, investigative or confidential services, an agency shall follow the procedure established herein and the mayor shall comply with the reporting requirements set forth in paragraph 8.

1. Prior to issuing an invitation for bids, request for proposals, or other solicitation, or renewing or extending an existing contract, the agency shall determine whether such contract is the result of or would result in the displacement of any city employee within the agency. For the purpose of this section, "displacement" shall mean a reduction in the number of funded positions, including but not limited to, that resulting from the attrition; layoff; demotion; bumping; involuntary transfer to a new class, title, or location; time-based reductions, or reductions in customary hours of work, wages, or benefits of any city employee.

a. There shall be a presumptive determination that a proposed contract is the result of or would result in displacement if any of the following events occurred in the three year period preceding the date the agency intends to issue an invitation for bids, request for proposal, or other solicitation, or renew or extend an existing contract:

(1) the displacement of a city employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or

(2) the announcement of spending reductions in connection with a budgetary program, including but not limited to a Program to Eliminate the Gap, that could result or has resulted in the displacement of a city employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or

(3) any other statement by an agency or the mayor of a specific anticipated employment action that could result or has resulted in the displacement of a city employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose.

b. If the agency determines that displacement would not occur, it shall include a certification to that

effect, signed by the agency head, in any invitation for bids, request for proposals, or other solicitation, or with any contract renewal or extension. Such certification shall detail the basis upon which the agency determined that displacement would not occur, construing broadly the nature of the services sought and providing information including but not limited to: (i) whether any civil service title and/or job title within the agency currently performs the services solicited and/or services of a substantially similar nature or purpose, the names of such titles, and the extent to which agency employees within such titles currently perform such services; (ii) whether the solicited services expand, supplement, or replace existing services, and a detailed description comparing the solicited services with such existing services; (iii) whether there is capacity within the agency to perform the services solicited and, if there is no such capacity, a detailed description specifying the ways in which the agency lacks such capacity; (iv) for the term of the proposed contract, the projected headcount of employees within such titles or employees who perform such services and/or services of a substantially similar nature or purpose; and (v) confirmation that none of the events set forth in subparagraph a of this paragraph occurred within the agency in the three year period preceding the date such agency intends to issue an invitation for bids, request for proposal, or other solicitation, or renew or extend an existing contract.

c. If the agency determines that displacement would occur, the agency shall determine the costs incurred and the benefits derived in performing the service, consistent with the scope and specifications within the solicitation, renewal, or extension, with city employees, and shall submit such analysis, with all supporting documentation, prior to issuance of any solicitation or entry into any contract renewal or extension, to the comptroller.

2. Immediately upon receipt of bids, proposals, and other solicitation responses, or prior to the renewal or extension of an existing contract, the agency shall submit such determination, analysis, and supporting documentation to the council and to the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of subdivision a of this section.

3. Prior to award of a contract, a renewal, or an extension, the agency shall perform a comparative analysis of the costs expected to be incurred and the benefits expected to be derived from entering into, renewing, or extending a contract with the proposed vendor, based on such vendor's best and final offer, and such agency's analysis of the costs incurred and the benefits derived from providing the service with city employees. If the agency head intends to award, renew, or extend the contract, he or she shall submit the reasons therefor, together with such analysis, and all supporting documentation, to the comptroller, the council, and the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of subdivision a of this section.

4. The council may, within thirty days after receipt of such reasons, analysis, and supporting documentation hold a hearing on this matter. No contract award, renewal, or extension shall be made prior to the expiration of this thirty-day period or a council hearing, whichever is sooner.

5. a. All cost and comparative analyses required under this section shall be conducted in accordance with standard methodology of the office of management and budget, and consistent with the rules of the procurement policy board, as both are modified herein, subject to further modification by local law. Such analyses shall include all reasonable costs associated with performing the service using city employees and all reasonable costs associated with performing the service under the proposed contract or contract renewal or extension.

b. Such analyses shall further include the total number, qualifications, job descriptions, and titles of all personnel to be employed by the vendor under the proposed contract or contract renewal or extension, as well as the nature and cost of salaries and benefits to be provided to such personnel.

c. Such analyses shall further include, but not be limited to, the cost of employee supervision directly related to the provision of the service, vendor solicitation, contract preparation, contract administration, monitoring and evaluating the contractor, capitalization of equipment over the period such equipment shall be in use, supplies, the cost of providing the equivalent quantity and quality of service by city employees compared to the cost of providing such service by contract, based upon the best and final offer of the proposed vendor, and such other factors as will assist in arriving at full and accurate cost determinations and comparisons.

6. The reasons given to award, renew, or extend the contracts shall include all factors that have been considered in determining whether contracting for this service is in the best interest of the city, whether or not such reasons are contained within the cost or comparative analyses. Such factors shall include, but not be limited to, the potential for contractor default, the time required to perform the service, and the quality of the service to be delivered.

7. The mayor or his or her designee may prepare and implement a plan of assistance for displaced city employees, which may include, but need not be limited to, training to place such employees in comparable positions within the contracting agency or any other agency. The cost of such assistance plan may be included within the cost of contracting-out in the cost and comparative analyses.

8. a. For the purposes of this paragraph, "agency" means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the department of education, the health and hospitals corporation, and the New York city housing authority, but shall not include any court, or any local development corporation or other not for profit corporation or institution, including such a corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

b. The mayor shall, no later than July 31st of each year, produce and publish on the mayor's office of contract services website a plan and schedule for each agency detailing the anticipated contracting actions of each such agency for the upcoming fiscal year. The plan and schedule shall include: (i) information specific to each prospective invitation for bids, request for proposal, or other solicitation, including, but not limited to, the nature of services sought, the term of the proposed contract, the method of the solicitation the agency intends to utilize, the anticipated fiscal year quarter of the planned solicitation, the civil service and/or job titles within the agency who perform the services sought and/or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services; and (ii) information specific to each proposed contract renewal or extension, including, but not limited to, any modifications sought to the nature of the services performed under the contract, the term of the proposed renewed or extended contract, the reason(s) the agency intends to renew or extend such contract, the month and year of the expiration of the existing contract, the civil service and/or job titles within the agency who perform the services sought and/or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services.

c. If an agency intends to issue an invitation for bids, request for proposal, or other solicitation, or renew or extend an existing contract, but the mayor fails to include such prospective invitation, request, solicitation, renewal or extension in the plan and schedule, the mayor shall provide public notice sixty days before such agency issues such invitation, request, or solicitation, or enters into such renewal or extension. Such notice, which shall be posted on the mayor's office of contract services website and in the city record, shall include: (i) information specific to the prospective invitation for bids, request for proposal, or other solicitation, including, but not limited to, the nature of services sought, the term of the proposed contract, the method of the solicitation the agency intends to utilize, the civil service and/or job titles within the agency who perform the services sought and/or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services; or (ii) information specific to the proposed contract renewal or extension, including, but not limited to, any modifications sought to the nature of the services performed under the contract, the term of the proposed renewed or extended contract, the reason(s) the agency intends to renew or extend such contract, the civil service and/or job titles within the agency who perform the services sought and/or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services.

b.1.Except as provided for in sections three hundred fourteen, three hundred fifteen and three hundred sixteen, contracts shall be awarded by competitive sealed bidding under such rules as shall be made by the procurement policy board, except that, in a special case as defined in subdivision b of this section, the head of an agency proposing to award such contract may order otherwise in accordance with policies and procedures established by the procurement policy board.

2. A determination by the head of an agency to use other than competitive sealed bidding except as provided for by sections three hundred fourteen and three hundred sixteen shall be made in writing, stating the reasons why competitive sealed bidding is not practicable or not advantageous and why the method of procurement selected pursuant to section three hundred seventeen is the most competitive alternative that is appropriate under the circumstances. The head of the agency shall include the determination or a summary of the determination in the notice of solicitation, or for an emergency procurement in the notice of award, required to be published pursuant to section three hundred twenty-five of this chapter.

c.1.For the purposes of this chapter, the term "special case" shall be defined as a situation in which it is either not practicable or not advantageous to the city to use competitive sealed bidding for one of the following reasons:

i. specifications cannot be made sufficiently definite and certain to permit selection based on price alone;

ii. judgment is required in evaluating competing proposals, and it is in the best interest of the city to require a balancing of price, quality, and other factors;

iii. the good, service or construction to be procured is available only from a single source;

iv. testing or experimentation is required with a product or technology, or a new source for a product or technology, or to evaluate the service or reliability of such product or technology; or

v. such other reasons as defined by rule of the procurement policy board.

2. The procurement policy board may provide by rule that it is either not practicable or not advantageous to the city, for one of the reasons set forth in paragraph one of this subdivision, to procure a specified type of good, service or construction by competitive sealed bidding.

§ 313. **Competitive sealed bidding.**

a. The term competitive sealed bidding shall mean a method of procurement where the award of a contract is made to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

b. Procedures for competitive sealed bidding.

1. Bids shall be solicited through an invitation for bids, which shall include a purchase description and a notice of where vendors may obtain a copy of all contractual terms and conditions applicable to the procurement. A notice of the intention to solicit bids shall be publicly advertised in accordance with the provisions of section three hundred twenty-five of this chapter. The terms of such contracts shall be settled by the corporation counsel as an act of preliminary specification to an invitation for bids.

2. The agency letting the contract may reject all bids if it shall deem it for the interest of the city so to do; if not, it shall, without other consent or approval, award the contract to the lowest responsible bidder, unless the mayor shall determine in writing, justifying the reasons therefor, that it is the best interest of the city that a bid other than that of the lowest responsible bidder shall be accepted. Such determination shall be published in the City Record. Tie bids are to be decided by the agency letting the contract and the award made. Whenever a contract is awarded to other than the lowest bidder because the lowest bidder is determined by the agency not to be a responsible bidder or because the lowest bid is determined by the agency to not meet the requirements and criteria set forth in the invitation for bids, the agency making such determination and awarding such contract shall immediately notify the lowest bidder of such determination and shall file in the agency contract file a statement in detail of the reasons therefor.

3. Any bidder who is declared not responsible by an agency and any bidder whose bid is determined by an agency to not meet the requirements and criteria set forth in the invitation for bids may, within five days of receipt of notice of the agency decision, appeal such decision to the agency head. A determination of an agency head of an appeal of a decision of non-responsibility may be appealed to the mayor who shall take final action regarding such matter. A determination of an agency head of an appeal of a decision that a bid does not meet the requirements and criteria set forth in the invitation for bids shall be final.

c. No bid shall be valid unless accompanied by a deposit in the amount and manner set forth and specified in the proposal; provided, however, that the procurement policy board shall establish such requirements for bid deposits as are necessary and practicable, and, pursuant to rules and standards, may waive the bid deposit requirement for specific classes of purchase or types of transactions. Upon the award of the contract the deposits of unsuccessful bidders shall be returned to them, and the deposit of the successful bidder shall be returned upon execution of the contract and furnishing of the required security.

d. Every invitation for bids shall contain a provision that in the event of the failure of the bidder to execute the contract and furnish the required security within ten days after notice of the award of

the contract, the deposit or so much thereof as shall be applicable to the amount of the award made shall be retained by the city, and the bidder shall be liable for and shall agree to pay on demand the difference between the price bid and the price for which such contract shall be subsequently relet, including the cost of such reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid.

§ 314. **Small purchases.**

a. Notwithstanding any other provision of this charter, the procurement policy board and the council may, by concurrent action, establish dollar limits for procurement of goods, services, construction, or construction-related services that may be made without competition or without public advertisement. Awards pursuant to this section shall be made in accordance with rules of the procurement policy board.

b. On or before September thirtieth, two thousand and three, and on or before the last day of every quarter thereafter, the mayor or his or her designee shall submit to the council and the comptroller a report detailing each small purchase award made pursuant to this section during the quarter that ended three months before such report is due and for which information is required to be contained in the computerized data base maintained pursuant to subdivision a of section 6116.2 of the administrative code. Such report shall provide the name of the vendor selected to fulfill the requirements of each such small purchase award, the date and dollar amount of each such small purchase award and the type of goods or services provided.

§ 315. **Emergency procurement.**

Notwithstanding the provisions of section three hundred twelve of this chapter, in the case of unforeseen danger to life, safety, property or a necessary service, an emergency procurement may be made with the prior approval of the comptroller and corporation counsel, provided that such procurement shall be made with such competition as is practicable under the circumstances, consistent with the provisions of section three hundred seventeen of this chapter. A written determination of the basis for the emergency and the selection of the contractor shall be placed in the agency contract file, and shall further be submitted to the council no later than fifteen days following contract award, and the determination or summary of such determination shall be included in the notice of the award of contract published pursuant to section three hundred twenty-five of this chapter.

§ 316. **Intergovernmental procurement.**

Notwithstanding any other requirement of this chapter,

a. any goods may be procured, ordered or awarded through the United States General Services Administration, or any other federal agency if the price is lower than the prevailing market price; any services or construction may be procured, ordered or awarded through the United States General Services Administration, or any other federal agency if the price is fair and reasonable, and

b. any goods may be procured, ordered or awarded through the New York State office of general services, or any other state agency, if the price is lower than the prevailing market price; any services or construction may be procured, ordered or awarded through the New York State office of

general services, or any other state agency, if the price is fair and reasonable.

§ 317. **Alternatives to competitive sealed bidding.**

a. If, in accordance with section three hundred twelve, an agency determines that the use of competitive sealed bidding is not practicable or not advantageous to the city, the agency shall select the most competitive alternative method of procurement provided for by sections three hundred eighteen through three hundred twenty-two which is appropriate under the circumstance. Each agency contract file shall contain documentation of such determination and of the basis upon which each contract is awarded, as is required by the procurement policy board.

b. Each contract for goods, services or construction in value of more than five million dollars proposed by an agency to be awarded which is let by other than (i) competitive sealed bidding, (ii) competitive sealed bids from prequalified vendors, or (iii) competitive sealed proposals, where the weight assigned to each of the factors or criteria to be considered in selecting the proposal most advantageous to the city was set forth in a writing filed in the agency contract file prior to the opening of proposals, shall require the approval of the mayor prior to its execution. Notwithstanding the preceding sentence, the mayor may, where the mayor has determined that it is appropriate, exclude an agency's contracts or a particular category of contracts from the approval requirement of this subdivision.

§ 318. **Competitive sealed bids from prequalified vendors.**

In accordance with section three hundred seventeen, bids may be solicited from vendors who have been prequalified for the provision of a good, service or construction pursuant to section three hundred twenty-four by mailing notice to each prequalified vendor or, if special circumstances require, to a selected list of prequalified vendors. Award of the contract shall be made in accordance with the provisions of section three hundred thirteen of this chapter. A determination to employ selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the agency and approved by the mayor; unless the mayor, upon adequate assurances of an agency's capacity to comply with procedural requirements in relation to this section, has determined that such approval is not required for an agency's contracts or particular categories of contracts.

§ 319. **Competitive sealed proposals.**

In accordance with section three hundred seventeen, proposals may be solicited through a request for proposals with award to the responsible offeror whose proposal is determined to be the most advantageous to the city, taking into consideration the price and such other factors or criteria as are set forth in the request for proposals. No other factors or criteria shall be used in the evaluation and award of the contract except those specified in the request for proposals. Discussions may be conducted with responsible offerors who submit proposals, provided that offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of the proposals.

§ 320. **Competitive sealed proposals from prequalified vendors.**

In accordance with section three hundred seventeen, proposals may be solicited from vendors who have been prequalified for the provision of a good, service or construction pursuant to section three

hundred twenty-four by mailing notice to each prequalified vendor or, if special circumstances require, to a selected list of prequalified vendors. Award of the contract shall be made in accordance with the provisions of section three hundred nineteen. A determination to employ selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the agency by the mayor; unless the mayor, upon adequate assurance of an agency's capacity to comply with the procedural requirements in relation to this section, has determined that such approval is not required for an agency's contracts or particular categories of contracts.

§ 321. **Sole source.**

a. In accordance with section three hundred seventeen, a contract may be awarded for a good, service or construction without competition when an agency determines, pursuant to rules promulgated by the procurement policy board, that there is only one source for the required good, service or construction. The agency contract file shall contain the agency's determination that only a single source is available for the required good, service or construction, including the process by which the agency made such determination. Copies of such notice shall be filed with the comptroller.

b. Whenever an agency determines that there is only a single source for a good, service or construction, an agency shall give immediate notice in the City Record of such determination and shall in such notice solicit the application of vendors qualified to provide such good, service or construction, or interested in providing such good service or construction in the future. The procurement policy board shall by rule define the timing and duration of such notification to ensure that vendors qualified to provide such good, service or construction have sufficient opportunity to express their interest to the agency prior to the initiation of any sole source negotiation; provided, however, that if the agency has determined that it should not reveal to the vendor with whom it is negotiating that it is doing so on a sole source basis under circumstances defined by rule of the procurement policy board, the notice required by this subdivision shall be made upon the completion of such negotiations or the award of the contract. Vendors interested in providing such good, service or construction in the future shall be prequalified in accordance with section three hundred twenty-four, or shall be included for receipt of notice in accordance with subdivision a of section three hundred twenty-five.

§ 322. **Alternative procurement procedures.**

In accordance with section three hundred seventeen, a contract may be awarded according to another procurement procedure established by rule of the procurement policy board, under circumstances, defined by rule of the procurement policy board, in which the use of such procedures is in the best interest of the city. An agency determination to utilize such an alternative procurement procedure for a particular procurement or for a particular type of procurement shall require the written approval of the mayor prior to seeking bids or proposals. The agency contract file shall contain the determination to use an alternative procurement procedure which shall state (1) which circumstances defined by the board to be in the best interest of the city apply to the procurement, including the basis upon which the agency made such determination, and (2) which procedure, as defined by the board pursuant to this section, was used in awarding the contract.

§ 323. **Multi-step sealed proposals.**

A preliminary request for proposals may be issued requesting the submission of unpriced offers. Submissions in response to such a preliminary request for proposals may be relied upon by an agency (a) to solicit competitive sealed bids in accordance with section three hundred thirteen of this chapter; (b) to solicit competitive sealed bids from prequalified vendors in accordance with section three hundred eighteen; (c) to solicit competitive sealed proposals in accordance with section three hundred nineteen; or (d) to solicit proposals from prequalified vendors in accordance with section three hundred twenty.

§ 324. **Prequalification.**

a. Agencies may maintain lists of prequalified vendors and entry into a prequalified group shall be continuously available. Prospective vendors may be prequalified as contractors for the provision of particular types of goods, services and construction, in accordance with general criteria established by rule of the procurement policy board which may include, but shall not be limited to, the experience, past performance, ability to undertake work, financial capability, responsibility, and reliability of prospective bidders, and which may be supplemented by criteria established by rule of the agency for the prequalification of vendors for particular types of goods, services or construction or by criteria published in the City Record by the agency prior to the prequalification of vendors for a particular procurement. Such prequalification may be by categories designated by size and other factors.

b. Any vendor who is denied prequalification or whose prequalification is revoked by an agency may appeal such decision to the agency head. A determination of an agency head may be appealed to the office of administrative trials and hearings for a hearing and such office shall take final action regarding such matter. A decision by an agency to suspend a vendor's prequalification may be appealed to the agency head, provided that if such suspension extends for more than three months, it shall be deemed a revocation of the prequalification for the purposes of this section.

§ 325. **Planning and Notification.**

a. Agencies that award client services contracts shall produce a draft and final plan and schedule detailing anticipated contracting actions for the upcoming fiscal year, and shall hold at least one public hearing each year immediately following the release of the draft plan and schedule to receive testimony regarding the plan and schedule. The draft and final plan and schedule shall include, but not be limited to: the type of services to be provided, the authorized maximum amount of funding associated with the program, the authorized number of contracts to be let for a particular program, the month and year of the next planned competitive solicitation. Failure to include a contract in the plan and schedule issued pursuant to this section shall not be grounds for invalidating the contract. The procurement policy board shall promulgate rules governing the issuance of the draft and final plans and schedules, which shall ensure that the draft plan and schedule is issued promptly following the submission of the executive budget and that the final plan and schedule is issued no later than September thirtieth each year.

b. Pursuant to rules of the procurement policy board, each agency shall

1.for each category of goods, services or construction which is regularly procured by the agency, periodically publish in the City Record a notice soliciting the names of vendors interested in being

notified of future procurement opportunities in each such category,

2.for each category of goods, services or construction for which the agency prequalifies vendors for future procurement, periodically publish in the City Record a notice soliciting the names and qualifications of vendors interested in being considered for prequalification for such category, and

3. publish in the City Record, and, where appropriate, in newspapers of city, state or national distribution and trade publications, notice of

(a)the solicitation of bids or proposals pursuant to section three hundred thirteen and three hundred seventeen through three hundred twenty-two, where the value of a contract is estimated to be above the small purchase limits, except where the agency has determined pursuant to section three hundred eighteen or three hundred twenty that solicitation should be limited to prequalified vendors,

(b) the award of a contract exceeding the small purchase limits in value. Each such notice of award shall indicate the name of the contractor, the dollar value of the contract, the procurement method by which the contract was let, and for contracts let by other than competitive sealed bidding, a citation of the clause of subdivision b of section three hundred twelve pursuant to which a procurement method other than competitive sealed bidding was utilized.

c. The procurement policy board, in consultation with the commissioner of citywide administrative services, shall promulgate rules providing for the publication and content of notices of contract actions required by this chapter. Such rules shall include provisions regarding,

i. the timing and frequency of notices,

ii. the required duration of solicitation periods,

iii. the form and content of notices, including the organization and presentation of such notices within standard categories of goods, services and construction which are sufficiently detailed to provide meaningful distinctions among categories.

d. The notice required by subparagraph a of paragraph three of subdivision a of this section shall not apply to contracts awarded on an emergency basis pursuant to section three hundred fifteen, provided that the agency shall, as soon as is practicable, publish notice that such a contract has been entered into, pursuant to rules of the procurement policy board, nor shall such notice requirements apply where the notice would disclose litigation strategy or otherwise impair the conduct of litigation by the city.

§ 326. **Public hearings on contract awards.**

a. Prior to entering into any contract for goods, services or construction to be awarded by other than competitive sealed bidding or competitive sealed bids from prequalified vendors, the value of which exceeds one hundred thousand dollars, the agency shall upon reasonable public notice conduct a public hearing to receive testimony regarding the proposed contract. Notwithstanding the preceding sentence, if, within a period of time after such notice, which period of time shall be determined by the procurement policy board, no individual requests an opportunity to speak at such

a public hearing with respect to any such proposed contract the value of which does not exceed one million dollars, then such public hearing need not be conducted. The procurement policy board may by rule exempt from this public hearing requirement contracts to be let which do not differ materially in terms and conditions, as defined by the board, from contracts currently held by the city where the parties to such contracts are the same; provided, that under no circumstance may such exemption apply to any contract in value exceeding ten million dollars.

b. The requirements of this section shall not apply to any procurement (i) let pursuant to a finding of an emergency under section three hundred fifteen, (ii) required to be made on an accelerated basis due to markets which experience significant, short-term price fluctuations, as identified by rule of the board, or (iii) where a public hearing would disclose litigation strategy or otherwise impair the conduct of litigation by the city.

§ 327. **Certification of legal authority and procedural requisites.**

a. In the case of any contract which is let by other than competitive sealed bidding, the mayor shall certify, prior to the filing of the contract with the comptroller for registration in accordance with section three hundred twenty-eight of this chapter, that the procedural requisites for the solicitation and award of the contract have been met. The mayor may delegate such function to the agency proposing to award a contract only upon adequate assurance of an agency's capacity to comply with procedural requirements.

b. The corporation counsel shall certify prior to the filing of a contract with the comptroller for registration in accordance with section three hundred twenty-eight of this chapter, that each agency proposing to award a contract has legal authority to award each such contract.

§ 328. **Registration of contracts by the comptroller.**

a. No contract or agreement executed pursuant to this charter or other law shall be implemented until (1) a copy has been filed with the comptroller and (2) either the comptroller has registered it or thirty days have elapsed from the date of filing, whichever is sooner, unless an objection has been filed pursuant to subdivision c of this section, or the comptroller has grounds for not registering the contract under subdivision b of this section.

b. Subject to the provisions of subdivision c of this section, the comptroller shall register a contract within thirty days unless the comptroller has information indicating that:

i. there remains no unexpended and unapplied balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract, as certified by the officer making the same;

ii. that a certification required by section three hundred twenty-seven of this chapter has not been made; or

iii. the proposed vendor has been debarred by the city in accordance with the provisions of section three hundred thirty-five.

c. The comptroller may, within thirty days of the date of filing of the contract with the comptroller's

office, object in writing to the registration of the contract, if in the comptroller's judgment there is sufficient reason to believe that there is possible corruption in the letting of the contract or that the proposed contractor is involved in corrupt activity. Such objection shall be delivered within such thirty day period to the mayor setting forth in detail the grounds for the

comptroller's determination. After the mayor has responded to the comptroller's objections in writing, indicating (i) the corrective actions if any, that have been taken or will be taken in response to the comptroller's objections, or (ii) the reasons why the mayor disagrees with the comptroller's objections, the mayor may require registration of the contract despite the comptroller's objections. Such response by the mayor shall not serve as the basis for further objection by the comptroller, and the comptroller shall register the contract within ten days of receipt of the mayor's response.

d. The requirements of this section shall not apply to

(1) an emergency contract awarded pursuant to section three hundred fifteen or to an accelerated procurement as defined under section three hundred twenty-six, provided that the agency shall, as soon as is practicable, submit any such contract to the comptroller for an audit of the procedures and basis for the determination of the need for an emergency or accelerated procurement, or

(2) a contract awarded pursuant to this chapter for the provision of goods, services or construction that is not to be paid for out of the city treasury or out of moneys under the control of the city, provided that the board of the entity awarding such a contract shall within ten days of awarding contract, file a copy of such contract and any related materials specified by the mayor, with the mayor or the mayor's designee for purposes of section three hundred thirty-four of this charter.

§ 329. **By whom procured.**

a. All services to be performed by contract, including the furnishing of goods incident thereto, shall be obtained by the agency for whose use the appropriation therefor shall have been made, except as otherwise provided by law or by rule of the procurement policy board.

b. All other goods shall be purchased or procured by the department of citywide administrative services, except as otherwise provided pursuant to this chapter or other law.

c. Pursuant to rules of the procurement policy board and subject to other sections of this chapter, each agency may purchase directly goods in an amount not to exceed one thousand dollars for each transaction or, with the prior approval of the commissioner of citywide administrative services, in an amount not to exceed five thousand dollars for each transaction. The limitation of this subdivision shall not apply to purchases by an agency under a vendor contract entered into by the commissioner of general services.

d. The dollar limits for direct agency purchases without the prior approval of the commissioner of citywide administrative services pursuant to subdivision c of this section may be raised to five thousand dollars for each transaction for any or all agencies by the commissioner of citywide administrative services with the approval of the mayor. Any proposed increases in the limits for such purchases above five thousand dollars shall be subject to the further approval of the comptroller. Any increase in dollar limits pursuant to this subdivision shall be published in the City Record and may be rescinded by the commissioner of citywide administrative services, the mayor,

or the comptroller.

e. Subject to the approval of the comptroller, a specific procurement of a specific good may be delegated by the commissioner of citywide administrative services, in the best interest of the city, to any agency for direct purchase by such agency, and shall not be subject to the provisions of subdivisions b, c or d of this section; provided, however, that such delegation shall not be made for goods that are to be generally used by city agencies.

§ 330. **Inspection.**

Inspection and acceptance or rejection of all deliveries of goods shall be made by the agency that makes the direct purchase other than under a vendor contract. The commissioner of citywide administrative services may authorize an agency to which delivery is made to perform such functions on purchases made by the department of citywide administrative services subject to standards and policies of the commissioner. The comptroller may continue to perform such inspectional duties as are necessary for auditing purposes, including ascertainment of whether items purchased and paid for by the department of citywide administrative services or other agencies have been received and put to use by agencies.

§ 331. **Specifications.**

All purchases shall be based upon specifications which are definite and certain, which permit of competition and which shall not be at variance with standard specifications for the various classes of goods approved by the commissioner of citywide administrative services. Before adopting standard specifications the commissioner shall obtain and consider the recommendations of agencies using the items to be standardized.

§ 332. **Payments procedure.**

The procurement policy board shall promulgate rules for the expeditious processing of payment vouchers by city agencies and departments including (i) the maximum amount of time allowed for the processing and payment of such vouchers from the later of (a) the date such vouchers are received by the agency, or (b) the date on which the goods, services or construction to which the voucher relates have been received and accepted by the agency, (ii) a program for the payment of interest, at a uniform rate, to vendors on vouchers not paid within the maximum amount of time pursuant to clause i of this subdivision, (iii) a process for the allocation and charging of any such interest payments to the budget of the agency responsible for the delay leading to the interest payments and (iv) agency reporting on the promptness of such payments in such form and containing such information as the board shall prescribe. The board shall coordinate and publish such agency prompt payment reports.

§ 333. **Evaluation and monitoring of contractor performance.**

a. Each agency letting contracts shall monitor the performance of every contractor. Information with respect to contractor performance shall be maintained in a central place in accordance with subdivision c of section three hundred thirty-four.

b.1.If a borough president determines there is reason to believe a term or condition of a contract

providing for the delivery of services in the borough is not being complied with and that the contract should be terminated for noncompliance, modified, not renewed, modified at the time of renewal, or that the existing terms of the contract should be enforced, the borough president shall document in writing the reasons for that determination and present such determination, with a recommendation for appropriate action, to the agency head for review. In the case of a recommendation that a contract should not be renewed or should be modified at the time of renewal, such recommendation shall be made to the agency head at least one hundred and twenty days prior to the expiration of the contract.

2. The agency head shall respond to the borough president's findings within ten days from receipt of such findings, indicating what action, if any, shall be taken. If such action is not satisfactory to the borough president, the borough president shall, within thirty days of receipt of such responses, be authorized to require that a hearing be held in the borough by a contract performance panel consisting of the public advocate, the comptroller and the mayor, or their designees, to receive the testimony of the borough president and other interested persons on the borough president's recommendations. The hearing shall be held within twenty days from the borough president's request for the hearing. The head of the agency which procured the services in question, or designee of such agency head, and the contractor whose performance is being evaluated, shall have the right, and it shall be their duty when requested by the panel to appear and be heard.

3. The panel shall recommend, within thirty days of the date of such hearing, such action as it deems appropriate and shall promptly deliver its recommendations in writing to the agency head, borough president and contractor. Within thirty days of receipt of the panel's recommendation, the agency head shall respond in writing to the panel and the borough president, indicating which of the panel's recommendations shall be acted upon and what, if any, alternative action will be taken.

4. In the case of any contract regarding which more than one borough president has submitted a determination in accordance with paragraph one of this subdivision, the agency receiving such determinations shall notify each such borough president of the agency response submitted in accordance with paragraph two of this subdivision. A hearing, if any, held shall include the comments of all such borough presidents.

§ 334. **Information on city contracts.**

a. Agency contract files. Each agency shall maintain files containing information pertaining to the solicitation, award and management of each contract of the agency in accordance with standard record maintenance requirements established pursuant to section three thousand four of this charter. The agency contract files shall contain copies of each determination, writing or filing required by this chapter pertaining to a contract and such information as is prescribed by rule of the procurement policy board, in such form as is prescribed by the procurement policy board. Agency contract files shall be open to the public inspection with adequate protection for information which is confidential.

b. Requests by elected officials for contract documentation. Whenever an elected official of the city requests documentation relating to the solicitation or award of any city contract, the mayor and city agencies shall promptly provide such documentation as is requested or shall promptly respond to the requesting official with reason why such documentation cannot be provided. If the mayor or agency is unable to provide the requested documentation within ten business days of the day the request is received, the mayor or agency shall within such time deliver to the requesting official a statement of the reasons the documentation cannot be promptly provided and shall include in such

statement a timetable within which the documentation will be provided, not to exceed thirty days from the date of the original request.

c. Centralized contract and contractor information. The mayor shall ensure that copies of city contracts and other standard information regarding city contracts and contractors are reasonably available for public inspection in accordance with provisions of section one thousand sixty-four of this charter.

§ 335. **Centralized evaluation of contractor integrity, performance, and capability.**

The mayor may evaluate the integrity, performance, and capability of entities that contract with the city, are seeking to contract with the city, or may seek to contract with the city. The mayor may designate one or more agencies to participate in such efforts. The evaluations of the mayor and any agency designated by the mayor may include conclusions regarding whether the entity should be considered a responsible contractor. The mayor and any agency designated by the mayor may make such evaluations and conclusions available to agencies and the public through a centralized data base.