

NOTICE
OF ADOPTION OF FINAL RULE

The Procurement Policy Board has adopted an amendment to **Chapter 2 Responsiveness of Bids/ Proposals** of its Rules pursuant to Section 311 of the New York City Charter. The amendment was published on January 14, 2009 in the City Record. A public hearing was held on February 18, 2009. The amendment was adopted by the Procurement Policy Board on March 4, 2009.

Basis and Purpose of the Amendment

The amendment requires the agency to inform a vendor in a notice of non-responsiveness that award of the contract shall be stayed if the vendor appeals unless otherwise determined by the ACCO. The amendment also requires the agency to inform the vendor in the notice of non-responsiveness if the award has not been stayed pursuant to an ACCO determination, or, if a determination is made to lift the stay after the notice of non-responsiveness, to notify the vendor no later than 2 business days after the determination to lift the stay is made. The purpose of the amendment is to clarify the process that needs to be followed for non-responsiveness determinations.

The Amended Rule

In the amendment, which immediately follows this notice, new material is underlined and deletions are bracketed.

Jose Maldonado, Chair

Subdivisions (b) and (e) of section 2-07 of Title 9 of the Rules of the City of New York are amended as follows:

Section 2-07 RESPONSIVENESS OF BIDS/PROPOSALS.

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- (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.

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

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(3) Stay of Award of Contract Pending Agency Head Determination. Award of the [procurement] contract shall be stayed pending the determination of the Agency Head, unless the ACCO makes a determination that proceeding with the [procurement] 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.

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