

NOTICE OF ADOPTION OF FINAL RULE

The Procurement Policy Board has adopted amendments to **Chapter 2 Procurement Process** of its Rules pursuant to Section 311 of the New York City Charter. The amendments were published in *The City Record* on April 27, 2012, and the required public hearing was held on June 4, 2012. The amendments were adopted by the Procurement Policy Board on April 8, 2013. These rules will take effect 30 days after publication.

Statement of Basis and Purpose

This rule is adopted pursuant to the authority of the Procurement Policy Board under sections 311 and 1043 of the New York City Charter.

According to the rules of the Procurement Policy Board, a responsive bid or proposal complies with:

- all material terms and conditions of the agency's procurement solicitation, and
- all material requirements of the agency's specifications for the goods, services, or construction to be procured.

The Agency Chief Contracting Officer ("ACCO") is required to make a determination of responsiveness before a contract can be awarded to a potential vendor.

Courts interpreting whether a bid must be rejected because it did not comply with bid requirements have stated that to waive a finding of non-responsiveness and award a contract to an otherwise non-responsive bidder, the procuring agency must conclude that such a waiver would not:

- deprive the agency of the assurance that the contract will be performed according to its specific requirements, or
- adversely affect the competition.

The amendment will make the Procurement Policy Board rule regarding non-responsiveness consistent with this interpretation.

New material is underlined and deletions are [bracketed].

Section 1. Subdivision (d) of section 2-07 of Chapter 2 of Title 9 of the Rules of the City of New York is amended as follows:

(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.