

NOTICE
OF ADOPTION OF FINAL RULE

The Procurement Policy Board adopted a new rule § **4-12 Late Registration** pursuant to Section 311 of the New York City Charter. The proposed Rule was published on October 6, 2005. A public hearing was held on November 8, 2005. The Rule was adopted by the PPB on April 25, 2006. The effective date of this rule is July 1, 2006.

Basis and Purpose of the Rule

The proposed rule creates a new section 412 which establishes standards regarding the submission of certain contracts to the Comptroller for registration and provides for monetary penalties in the event that an agency fails to meet such standards.

The Amended Rule

In the rule, which immediately follows this notice, new material is underlined.

Brendan J. Sexton, Chair

Section 4 –12 of Title 9 of the Rules of the City of New York is amended to read as follows:

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, 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) 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.