

**NOTICE**  
**OF ADOPTION OF FINAL RULE**

The Procurement Policy Board (PPB) has adopted amendments to: **§ 2-08, Vendor Responsibility and Appeal of Determination of Non-Responsibility; § 3-02, Competitive Sealed Bidding; § 4-06, Prompt Payment; and § 4-09, Resolution of Disputes Arising Out of Contract Administration, of chapters 2, 3 and 4 of Title 9 of the Rules of the City of New York**, pursuant to Sections 311 and 1043 of the New York City Charter. The amendment was published on May 13, 2009 in the City Record. A public hearing was held on June 18, 2009. The amendment was adopted by the Procurement Policy Board on June 24, 2009.

**Basis and Purpose of the Amendments**

In light of the fact that the administrative functions of the Procurement Policy Board (PPB) are now handled by the Mayor's Office of Contract Services (MOCS), the amendments substitute the City Chief Procurement Officer (CCPO) and the Comptroller, in lieu of the PPB, for receipt or filing of various documents required to be submitted to the PPB under the rules. The amendment to 4-09 eliminates the reference to the Office of Construction because it is now a part of MOCS. Finally, because agencies have owed low levels of prompt payment interest in recent years, the change to rule 4-06 removes the requirement that agencies publish monthly prompt payment performance statistics and instead requires them to provide them upon request. The change to rule 4-06 also conforms the language to the Charter and requires posting of all reports on the City's website.

**The Amended Rule**

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

Jose Maldonado, Chair

**Section 1. Paragraph (2) of subdivision (h) of section 2-08 of Title 9 of the Rules of the City of New York is amended as follows:**

(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 [Procurement Policy Board].

**Section 2. Subdivision (t) of section 3-02 of Title 9 of the Rules of the City of New York is amended as follows:**

(t) Selection of Other Than Lowest Bidder. If the ACCO determines that the lowest bidder is either not responsible or not responsive, the lowest 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 [PPB].

**Section 3. Paragraph (5) of subdivision (g) of section 4-06 of Title 9 of the Rules of the City of New York is amended as follows:**

(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 [PPB] upon issuance.

**Section 4. Subdivision (h) of section 4-06 of Title 9 of the Rules of the City of New York is amended as follows:**

(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 [publish monthly] 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.

**Section 5. Paragraph (5) of subdivision (g) of section 4-09 of Title 9 of the Rules of the City of New York is amended as follows:**

(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, [the Office of Construction, the PPB,] and, in the case of construction, 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.