

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

The Procurement Policy Board has adopted an amendment to **Chapter 4 Resolution of Disputes Arising Out of Contract Administration** 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 to section 4-09 provides that dispute resolution shall not apply to terminations of contracts other than for cause. The amendment also clarifies that (1) work under a contract shall continue during the dispute resolution process unless otherwise directed by the ACCO or Engineer, and (2) the rule applies to all disputes except as otherwise provided by the rule. The purpose of this last change in the amendment is to conform the rules to the decision of the Appellate Division, First Department in Big Apple Physical Therapy v. Fire Department of the City of New York, 24 A.D.3d 168 (1<sup>st</sup> Dept. 2005). The purpose of the other changes is to promote clarity and efficiency in the process of dispute resolution.

**The Amended Rule**

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

Jose Maldonado, Chair

**Section 1. Subdivisions (a) and (c) of section 4-09 of Title 9 of the Rules of the City of New York is amended as follows:**

**Section 4-09            RESOLUTION OF DISPUTES ARISING OUT OF  
CONTRACT ADMINISTRATION.**

(a)    Applicability. Except as provided in (1) and (2) below, [T]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 [of the kind delineated herein] 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, 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.

(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 [by the ACCO or Engineer]. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of its claim.

