

## NOTICE OF ADOPTION OF FINAL RULE

The Procurement Policy Board has adopted an amendment to **Chapter 4 Completion of Contracts Following Default or Termination for Cause of Construction and Construction-Related Service Contracts** of its Rules pursuant to Section 311 of the New York City Charter. The amendment was published on April 2, 2010 in the City Record. A public hearing was held on May 5, 2010. The amendment was adopted by the Procurement Policy Board on May 11, 2010.

### **Basis and Purpose of the Amendment**

The City requires construction contractors to obtain performance bonds under certain circumstances whereby the surety, upon default of the contractor, obligates to either complete the construction or tender a penal sum to the City. If the surety fails to complete the construction or opts to tender a penal sum to the City, the City agency in question must enter into a completion contract with a different contractor to ensure that the work is completed. The amendment conforms the rule to the performance bond language by allowing an agency to enter into a completion contract after default of a contractor when a surety elects to tender payment of a penal sum, as well as when the surety fails to perform its obligations under the bond.

### **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 (c) of section 4-08 of Title 9 of the Rules of the City of New York is amended as follows:**

### **Section 4-08            COMPLETION OF CONTRACTS FOLLOWING DEFAULT OR TERMINATION FOR CAUSE OF CONSTRUCTION    AND    CONSTRUCTION- RELATED SERVICE CONTRACTS**

- (c)    Application. Completion contracts shall be entered into pursuant to this section in cases where:
- (1)    the contractor has been defaulted or terminated for cause;
  - (2)    there is no surety, or after a demand has been made by the agency, the surety either fails to perform its obligations in a timely manner or elects to tender a payment of funds as performance rather than completing the

work, in accordance with its obligations; and

- (3) there is a continuing need to complete all or part of the work.