

### **Notice of Adoption of Rules**

Pursuant to the authority vested in the Procurement Policy Board (PPB) by Sections 311 and 326 of the New York City Charter and in accordance with the requirements of Section 1043 of said Charter, the PPB has adopted amendments to Chapters 3 and 4 of Title 9 of the Rules of the City of New York.

### **Statement of Basis and Purpose**

The Procurement Policy Board (PPB) amendments update the provisions of the PPB Rules relating to the alternative project delivery method known as design-build. Design-build is one method of alternative project delivery where one entity or a team of separate entities work under a single contract to provide design and construction services. Design-build provides a streamlined method of contracting to promote efficiency in publicly funded projects.

On April 12, 2018, the State of New York enacted the New York City Rikers Island Jail Complex Replacement Act, which gave the New York City Department of Design and Construction (DDC) the authority to engage in design-build procurements for construction necessary for the timely closure of the Rikers Island Jail Complex. Also on April 12, 2018, the State enacted the New York City BQE Design-Build Act, which gave the New York City Department of Transportation (DOT) and DDC the authority to engage in design-build procurements for the construction on a portion of the Brooklyn Queens Expressway.

Effective December 31, 2019, the State enacted the New York City Public Works Investment Act (PWIA), which authorized the New York City Department of Environmental Protection, the New York City Department of Parks and Recreation, DDC, and DOT to engage in design-build procurements pursuant to the methodology detailed in the PWIA. On April 9, 2022, the State amended the PWIA to additionally authorize the New York City Department of Citywide Administrative Services.

On July 2, 2018, the City Chief Procurement Officer (CCPO) approved design-build utilization for all State-authorized agencies as a PPB Rule 3-12 innovative procurement method. On August 2, 2022, the CCPO issued an additional authorization. Pursuant to PPB Rule 3-12(f), the CCPO must submit a final report to the PPB no later than eight months following the registration of a contract let pursuant to this authorization that recommends whether it would be in the City's best interest to codify the innovative procurement method. On July 25, 2025, the CCPO submitted the final report to the PPB and recommended that, based on the success of the City's design-build procurements and increasing widespread adoption of the design-build throughout the United States, the method should be codified in the PPB Rules.

This rule amends PPB Rule Sections 1-01, 3-01, 4-04, 4-07, 4-09, and creates a new PPB Rule Section 3-17 to establish rules relating to the design-build alternative project delivery method. This will allow the City to reduce costs and expedite public works project delivery while maintaining

quality and compliance. The current PPB Rules do not contemplate the New York State required multi-step process to procure design-build services. This rule describes the steps for such procurements for agencies authorized by the PWIA to use design-build.

Section 1 of this rule amends PPB Rule 1-01 to add definitions for relevant design-build terms.

Section 2 of this rule amends PPB Rule 3-01 by adding a new subdivision identifying new PPB Rule 3-17 as the preferred method for awarding contracts for design-build services.

Section 3 of this rule creates a new Section 3-17 to Chapter 3 of the PPB Rules to outline procedures and requirements for design-build procurements, including the procedures and requirements for requests for qualifications and for requests for proposals, reflecting the two-step process required by the PWIA. Section 3-17 also sets the procedures for proposal evaluation and vendor selection.

Section 4 of this rule amends PPB Rule Section 4-04 to reflect that contract renewals are not permitted on contracts for design-build services.

Section 5 of this rule amends PPB Rule 4-07 to reflect that buy-against procurements are not permitted on contracts for design-build services.

Section 6 of this rule amends PPB Rule 4-09 to reflect that 4-09 does not apply to contracts procured pursuant to new PPB Rule 3-17. The provisions of Rule 3-17 specifically govern the resolution of disputes under contracts for design-build services.

On August 20, 2025, the PPB voted to initiate the rulemaking process under the Citywide Administrative Procedure Act for these rule amendments. A proposed version of this amendment was published in the *City Record* on September 25, 2025. A public hearing was held on October 27, 2025.

The PPB received one written comment during the public comment period. Upon careful consideration of this comment and in consideration of the PPB's discussions during the August public meeting, the PPB adopted the amendment on December 4, 2025.

The PPB's authority to promulgate these rules is found in sections 311 and 1043 of the New York City Charter.

**§ 1. SUBDIVISION (E) OF SECTION 1-01 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED BY ADDING NEW DEFINITIONS IN ALPHABETICAL ORDER, TO READ AS FOLLOWS:**

ADR. An acronym that stands for Alternative Dispute Resolution.

DBE. An acronym that standards for the federal Disadvantaged Business Enterprise Program.

Design-Builder. An entity that performs Design-Build Services. The Design-Builder may be a firm

consisting of a single entity or comprised of two or more entities to form a joint venture, partnership or other corporate structure.

Design-Build Services. Services for the design and construction of a public work by a Design-Builder.

RFQ. An acronym that stands for Request for Qualifications. All documents, whether attached or incorporated by reference, used by the contracting agency for soliciting Statements of Qualifications for design-build contracts.

SOQ. An acronym that stands for Statement of Qualifications. All documents, whether attached or incorporated by reference, by a proposer to establish the proposer's qualification for the public work project described in the RFQ.

**§ 2. SECTION 3-01 OF CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED BY ADDING A NEW SUBDIVISION (C-1), TO READ AS FOLLOWS:**

(c-1) Preference for Design-Build in Certain Contracts. Procurements for Design-Build Services pursuant to section 3-17 of these Rules is the preferred method for awarding contracts for the design and construction of a public work with a Design-Builder. A "Special Case" determination is not required for such procurements.

**§ 3. CHAPTER 3 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED BY ADDING A NEW SECTION 3-17, TO READ AS FOLLOWS:**

**§ 3-17 Design-Build Services.**

**(a) Design-Build Services Procurement.**

(1) Application. Proposals for design-build contracts shall only be solicited as authorized pursuant to Chapter 749 of the laws of 2019, as amended, or any other provision of law authorizing the use of Design-Build Services. Such procurements shall follow a two-step process: 1) RFQ; and 2) RFP.

(2) Step 1: RFQ.

(i) The RFQ is used to initiate a competitive selection for SOQs to establish a shortlist of the most highly qualified proposers.

(ii) The RFQ shall include:

(A) a general description of the public work project, including but not limited to program goals, utility relocations, professional licensing requirements, project description and Design-Builder responsibilities, funding sources, list of stakeholders, anticipated project duration, contract

type, payment structure, costs, and any special instructions, and, if applicable, a notice that the agency may issue one or more RFPs as a result of the RFQ and a potential list and description of work for each RFP;

(B) the maximum number of proposers to be included on the shortlist;

(C) general instructions including, but not limited to, rules of communications between proposers, rules of contact between vendors, and the process for questions or clarifications regarding the RFQ;

(D) an overview of the procurement process including but not limited to the purpose of the RFQ and RFP and the procurement schedule;

(E) the selection criteria to be used to evaluate the vendors, including any mandatory selection criteria set forth in the applicable state law and the relative weight of each criterion used to evaluate the vendors and generate the shortlist including but not limited to:

((i)) the qualifications and experience of the Design-Builder, including entities comprising the Design-Builder's team;

((ii)) Design-Builder organization;

((iii)) demonstrated responsibility;

((iv)) ability of the Design-Builder to comply with applicable requirements, including the provisions of articles 145, 147 and 148 of the New York State Education Law;

((v)) past record of compliance with the New York State Labor Law;

((vi)) experience with M/WBEs or State-certified M/WBEs and the M/WBE program, and the vendor's anticipated approach to meet M/WBE goals or, if applicable, experience with DBEs and the DBE program and the Design-Builder's anticipated approach to meet DBE goals; and

((vii)) any other qualifications the agency deems appropriate, which may include, but is not limited to, understanding, financial capability, and record of past performance and experience.

(F) SOQ evaluation process, including but not limited to, the evaluation objectives, evaluation factors, and requests for clarification process;

(G) SOQ submission requirements including requirements, if any, for the electronic submission of SOQs, if applicable, and including but not limited to submission address, content requirements including fundamental qualifications, past performance and experience on projects, Design-Builder organization, management approach, description of experience in the line of work being considered including references, and known and potential conflicts of interest;

(H) notice of vendor right to protest and file complaints on certain enumerated decisions;

(I) agency rights and disclaimers;

(J) notice of participation by M/WBEs and State-certified M/WBEs in City procurement, including but not limited to M/WBE policy, M/WBE goals, a notice that contract award shall comply with the objectives and goals of Section 6-129 of the New York City Administrative Code (M/WBE and EBE Program) or article 15-A of the executive law, as well as to applicable provisions of federal, State, and other local laws, and executive orders;

(K) a requirement for acknowledgment of amendments;

(L) requirements of compliance with applicable laws;

(M) general, as well as special terms and conditions, if applicable;

(N) a provision that proposers should give specific attention to the identification of those portions of their SOQs that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the SOQs;

(O) if applicable, a notice that selection for the shortlist is subject to completion of a PASSPort questionnaire and review of that information by the Department of Investigation;

(P) if applicable, information regarding a stipend for unsuccessful qualified, responsive and responsible proposers who are selected for the shortlist and who comply with the relevant stipend criteria and requirements defined in the subsequent RFP and the anticipated stipend amount; and

(Q) any other information as determined by the ACCO.

(iii) The RFQ shall be publicly advertised on the City's website at least twenty-seven days prior to the due date for SOQs.

(iv) *Evaluation Process.* The agency shall evaluate and rate all vendors' SOQs based on the selection criteria and evaluation factors set forth in the RFQ. Based upon the results of the evaluation and the ranking of the vendors based on such ratings, the agency shall select the responsive, responsible vendors for the shortlist that shall receive an RFP pursuant to PPB Rule 3-17(a)(3).

(v) The ACCO may, upon written approval by the CCPO, issue one RFQ that may result in multiple RFPs upon determination by the ACCO that it is in the best interest of the City to award multiple contracts to multiple Design-Builders and to allocate work among such Design-Builders with separate RFPs. The criteria to be considered by the ACCO in making such determination shall include the following: the nature of the Design-Build Services to be procured; a description of the public work project; the location(s) of the public work project; anticipated cost of the separate RFPs or awards; the capacity of proposers to provide all of the required Design-Build Services within the required timeframes; the potential advantage of multiple contracts (e.g., more favorable terms; more competitive pricing); efficiency in procurement administration and common market practice for certain asset classes; and justification for multiple awards from one RFQ.

(vi) Multiple evaluation committees may be established to evaluate SOQs submitted for a single RFQ for a public work project.

(vii) *Randomized evaluation process.* If the ACCO determines that such a high volume of competing SOQs is likely to be received that it will be infeasible for each member of the evaluation committee to read each SOQ, the ACCO may, subject to the approval of the CCPO, establish a pool of appropriate evaluators and then randomly assign each SOQ to at least three such evaluators for review.

(viii) *Shortlist Notice.*

(A) Frequency. Notice of shortlist selection shall be posted publicly on the City's website following the agency's final determination of a shortlist.

(B) Content. Such notice shall include:

((i)) agency name;

((ii)) title or brief description of the project to be procured;

((iii)) name of the shortlisted responding entities; and

((iv)) contact info for the shortlisted responding entities, if provided.

(3) *Step 2: RFP.*

(i) Upon completion of the RFQ step, the agency shall issue the RFP to only the shortlisted proposers pursuant to Section 3-17(a)(2).

(ii) The RFP shall include:

(A) a statement that the contract award will be made to the responsible proposer whose proposal represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, in accordance with the evaluation criteria, including price and other factors, that are set forth in the RFP;

(B) a statement of work or scope of services statement, performance requirements, and any special instructions;

(C) the specific criteria and the relative weight of each criterion or category of criteria that will be used to evaluate the proposals, including but not limited to:

((i)) the proposal's price;

((ii)) the quality of the proposal's solution;

((iii)) the qualifications and experience of the proposer;

((iv)) the approach to meeting the anticipated M/WBE goals; and

((v)) other factors deemed pertinent by the agency, which may include, but shall not be limited to, the proposal's manner and schedule of project implementation, the proposer's ability to complete the work in a timely and satisfactory manner, maintenance costs of the completed public work, maintenance of traffic approach, and community impact;

(D) a statement of how price will be evaluated, including, but not limited to, a notice that prices shall be irrevocable until the contract is executed by the selected proposer, unless the proposal is withdrawn, and that offers may be withdrawn only after the expiration of one hundred eighty days (or such period as is specified in the solicitation, but not shorter than ninety days) after opening of proposals, in writing received by the agency prior to award, and a request for cost breakdown of the proposed price, if applicable;

(E) proposal submission requirements including requirements, if any, for the electronic submission of proposals; if applicable, that technical and price proposals shall be submitted in separate sealed envelopes (electronic or paper); and the time and date after which proposals will not be accepted

as well as location of proposal submission;

(F) other information such as delivery dates or time frames within which the work must be completed.

(G) general as well as special terms and conditions, if applicable;

(H) a notice of the proposer's rights to appeal certain decisions;

(I) a notice of the City's prompt payment policy pursuant to Section 4-06, including an explanation of the requirements for invoicing;

(J) a requirement for acknowledgment of amendments;

(K) a request for a description of experience in the line of work being considered (including references);

(L) a provision that the Design-Builder team evaluated and selected during the RFP shall remain unchanged throughout the project, unless otherwise approved in writing by the agency;

(M) a notice that although discussions may be conducted with proposers during the RFP process, award may be made without any discussions;

(N) if applicable, provision on the submission and consideration of interim design document submission and multiple or alternate proposals;

(O) a provision that proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposals;

(P) a notice that contract award is subject to the provisions of the MacBride Principles Law;

(Q) a notice that contract award is subject, if applicable, to the objectives and goals of Section 6-129 of the New York City Administrative Code (M/WBE and EBE Program) or article 15-A of the executive law, as well as to applicable provisions of federal, State, and other local laws, regulations, and executive orders;

(R) if applicable, a notice that contract award is subject to completion of a PASSPort questionnaire and review of that information by the Department of Investigation;



(S) where applicable, all information required pursuant to Section 312(a) of the Charter;

(T) the following statement:

The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the proposal process should inform the Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, NY 10007; telephone number (212) 669-2323;

(U) name, address, and telephone number of contact person;

(V) if applicable, information and process regarding a stipend for responsive and responsible proposers who comply with the relevant stipend criteria and requirements defined in the RFP, the anticipated stipend amount and a requirement to submit a signed stipend agreement as part of the proposal; and

(W) other requirements, as determined by the agency.

(iii) *Proposal Preparation Time and Form.* Proposal preparation time shall be set to provide vendors a reasonable time to prepare their proposals. A minimum of twenty-seven days shall be provided. The manner in which proposals are to be submitted, including any forms for that purpose, shall be designated as a part of the RFP.

(iv) *Individual Proposal Discussions Before Proposal Submission.* The agency may elect to enter into individual discussions with proposers to facilitate understanding of the requirements of the RFP and how the proposal and the proposer's capabilities and methodology will meet these requirements. Based on these discussions, the agency may issue addendums to the RFP to allow for utilization of alternative means, methods, or concepts that can meet the requirements of the RFP.

(v) *Conduct of Discussions During Individual Proposal Discussions Before Proposal Submission.*

(A) Proposers shall be accorded fair treatment with respect to any opportunity for discussions and revisions of proposals. If an agency elects to enter into individual discussions with a proposer, the agency must allow individual discussions with all proposers and give all proposers an opportunity to enter into individual discussions with the agency.

(B) The ACCO shall establish an agenda and schedule for conducting discussions.

(C) If there is a need for any material clarification of, or change in, the RFP, the RFP must be amended to incorporate such clarification or change and shall be provided to all proposers.

(vi) *Evaluation Committee.* Proposals shall be reviewed by an evaluation committee consisting of no fewer than three persons with knowledge, expertise, and experience sufficient to make a fair and reasonable evaluation. If an RFP incorporates multiple competitions pursuant to Section 3-17(a)(2)(v), each competition may be evaluated by a separate committee. The ACCO shall require each member of the evaluation committee(s) to submit a signed statement, in a format approved by the CCPO, agreeing to prohibitions on any conflicts of interest.

(A) Outside Evaluators. The evaluation committee may include persons who are not employed by the agency. In addition, the ACCO may determine, subject to the approval of the CCPO, that it is in the best interests of the City for the evaluation committee to include persons who are not employees of the City of New York, provided however that such non-City employees may not constitute a majority of the evaluation committee. Such persons must serve without financial compensation but may be entitled to travel and other related expenses as may be reasonably incurred in the execution of their role as an evaluator.

(vii) *Rating Sheets.* Ratings sheets or other written evaluation forms shall be used to evaluate proposals by the evaluators and each evaluator shall sign and date their rating sheet. Initial ratings may be amended and the amended ratings recorded on amended ratings sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained.

(viii) *Individual Proposal Discussions After Proposal Submission.* The evaluation committee shall evaluate all proposals and may elect to enter into individual discussions with those proposers that have submitted proposals that satisfy all RFP requirements, in each case for any or all of the following purposes:

(A) promoting understanding of the City's requirements and the vendors' proposals and capabilities;

(B) obtaining the best price for the City; or

(C) arriving at a contract that will deliver best value to the City in accordance with the evaluation criteria, including price and other factors, set forth in the RFP.

(ix) *Conduct of Discussions During Individual Proposal Discussions After Proposal Submission.*

(A) Proposers shall be accorded fair treatment with respect to any opportunity for discussions and revisions of proposals. If an agency elects to enter into individual discussions with a proposer, the agency must allow individual discussions with all proposers and give all proposers an equal opportunity to enter into individual discussions with the agency and modify their proposals.

(B) The ACCO shall establish an agenda and schedule for conducting discussions.

(C) If there is a need for any substantial clarification of, or change in, the RFP, the RFP must be amended to incorporate such clarification or change and shall be provided to all proposers.

(D) Any oral clarification of a proposal shall be confirmed in writing by the proposer.

(x) *Best and Final Offers.* Best and final offers are the revised and corrected final proposals submitted by proposers after discussions, if any, have been held by the procuring agency.

(A) The ACCO shall establish a common date and time for the submission of best and final offers.

(B) Best and final offers shall be submitted only once unless the ACCO makes a determination that it is in the City's best interest to conduct additional discussions and/or require another submission of best and final offers.

(C) Proposers shall be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(D) All best and final offers shall be maintained and handled in accordance with the control procedures contained in these Rules.

(E) The ACCO may request best and final offers on the whole proposal or on any one or combination of its component parts (e.g., price, technical qualifications, approach, and/or capability). The request shall be the same for all proposers.

(F) Best and final offers shall be evaluated in accordance with this subdivision.

(xi) *Mistakes in Proposals.*

(A) Confirmation of Proposal. When the ACCO knows or has reason to conclude before award that a mistake has been made, he or she should request the proposer to confirm the proposal. If the proposer alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in this subdivision are met.

(B) Mistakes Discovered After Receipt of Proposals but Before Vendor Selection.

((i)) During Discussions Prior to Best and Final Offers. Once discussions are commenced with any proposer or after best and final offers are requested, any offeror may correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

((ii)) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror, shall be treated in accordance with Section 3-02(m)(3)(i) of these Rules.

((iii)) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only in accordance with Section 3-02(m)(3)(ii) of these Rules.

(C) Mistakes Discovered After Vendor Selection. Mistakes shall not be corrected after vendor selection except in accordance with Section 3-02(m)(4) of these Rules.

(D) Determinations Required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a determination shall be prepared in accordance with Section 3-02(m)(5) of these Rules.

(xii) Vendor Selection and Documentation. The ACCO shall make a determination showing the basis on which the contract award was made to the responsible proposer whose proposal was determined to represent the best value to the City, in accordance with the evaluation criteria, including cost, quality, experience, efficiency and other factors, that are set forth in the RFP. Such final scores shall be published on the agency's website after registration of such contract or the date upon which such contract may be implemented, if registration requirements do not apply. This determination shall be included in a Recommendation of Award. Each Recommendation for Award shall include at a minimum the following information:

(A) justification of the award;

(B) affirmative finding of responsibility for the selected proposer(s);

(C) efforts to negotiate better value; and

(D) if applicable, the stipends and amounts being provided to responsive and responsible proposers who complied with the relevant criteria and requirements defined in the RFP.

(4) *Protests Procedures Applicable to the RFQ and RFP steps.* Vendor protests shall be made only pursuant to the procedures set forth in Section 2-10, except for Section 2-10(a)(2), and vendors shall follow the following procedures with respect to protest submittal procedures:

(i) *Time for Protest - RFQ Step:*

(A) Any protests based on the form or content of the RFQ which is or should have been apparent prior to the date established for submittal of the SOQ must be filed no later than fourteen days before the SOQ due date, or if the SOQ due date is revised, no later than seven days before the revised SOQ due date.

(B) Any protests other than those set forth in clause (4)(i)(A) above related to the RFQ must be filed no later than ten business days after the agency's publication of the shortlist.

(ii) *Time for Protest - RFP Step:*

(A) Any protests based on the form or content of the RFP must be filed before the proposal due date. Any protests based on the form or content of modifications to the original RFP must be filed no later than the next established due date for receipt of proposals following the modification.

(B) Any protests other than those set forth in clause (4)(ii)(A) above related to the RFP must be filed within ten business days after the protesting vendor knows or should have known the facts that prompted the protest but no later than ten business days after the agency's publication of the notice of public comment to the City Record. Before submitting a protest within the required time for protest, the vendor may request a meeting with the ACCO, in writing, to discuss the potential protest or the notice of award. The ACCO may, in their sole discretion, meet with the vendor within the required time for protest.

(b) *Dispute Resolution.* Resolution of Disputes arising out of design-build contract administration

shall be governed by the following provisions rather than Section 4-09 of these rules, and to the extent not inconsistent with this rule, the design-build contract:

(1) *Applicability.* This section shall apply to disputes between the City and a Design-Builder that arise under, or by virtue of, a contract for design-build services. All contracts shall include a clause providing that such disputes shall be finally resolved in accordance with the provisions of this section. This section includes disputes raised by the Design-Builder solely 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 Design-Builder's work to the contract, or the acceptability and quality of the Design-Builder's work. For disputes that are eligible for ADR pursuant to the design-build contract ("ADR-Eligible Disputes"), the Design-Builder may either:

(i) File a plenary action in accordance with applicable law and the terms of the contract; or

(ii) Dispute the Agency Head's final decision by following the procedure set forth in Rule 3-17(b)(3).

(A) An Agency's decision to terminate of the contract for cause or other than for cause is not an ADR-Eligible Dispute. Such a decision may only be challenged pursuant to an Article 78 proceeding brought in New York Supreme Court, New York County, within four months of the issuance of the decision.

(B) For other disputes, the Design-Builder may file an action in New York Supreme Court, New York County, in accordance with applicable law after the Agency Head has made a final decision.

(C) Prior to filing a plenary action or presenting its dispute notice ("Notice of ADR Dispute") to the Comptroller, the Design-Builder must comply with and exhaust the dispute resolution procedures contained in the contract, and the Agency Head must have issued their final decision, unless their time to do so has expired.

(D) Once the Design-Builder has filed a Notice of ADR-Dispute, it may only challenge the Agency Head's decision through the procedure set forth in the Rule 3-17(b)(3), and may not subsequently file a plenary action as to that dispute, unless the dispute is not an ADR Eligible Dispute. Once the Design-Builder has filed a plenary action, it may not pursue its dispute pursuant to Rule 3-17(b)(3).

(2) *Work to Continue.* During such time as any dispute is being presented, heard, and considered, the contract terms shall remain in force and, unless otherwise directed by the

ACCO or Engineer, work shall continue as directed. Failure of the Design-Builder to continue the work as directed shall constitute a waiver by the Design-Builder of its claim.

(3) *Presentation of ADR-Eligible Disputes.* Before any dispute may be brought by the Design-Builder to the CDRB, the Design-Builder must first present a Notice of ADR Dispute to the Comptroller for their review, investigation, and possible adjustment.

(i) *Time, Form, and Content of Notice.* Within thirty days of the Design-Builder's receipt of the Agency Head's final decision, the Design-Builder shall submit to the Comptroller and to the Agency Head a Notice of ADR Dispute regarding its dispute with the agency. The Notice of ADR Dispute shall consist of (i) a brief statement of the substance of the dispute; the amount of money, if any, claimed; and the reason(s) the Design-Builder contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Design-Builder in the contractual dispute resolution process. The Design-Builder may not present to the Comptroller any material not presented in the contractual dispute resolution process, except at the request of the Comptroller.

(ii) *Agency Response.* Within twenty days of receipt of the Notice of Claim, the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the Comptroller any material not presented to the Agency Head except at the request of the Comptroller

(iii) *Comptroller Investigation.* The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Design-Builder. Willful failure of the Design-Builder to produce within fifteen days any material requested by the Comptroller shall constitute a waiver by the Design-Builder of its claim. The Comptroller may also schedule an informal conference to be attended by the Design-Builder, agency representatives, and any other personnel desired by the Comptroller.

(iv) *Opportunity of Comptroller to Compromise or Adjust Claim.* The Comptroller shall have twenty days from his or her receipt of all materials referred to in (b)(3) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Design-Builder and the Comptroller, to a maximum of ninety days from the Comptroller's receipt of all materials. The Design-Builder may not present its petition to the CDRB until the period for investigation and compromise delineated in this section has expired or the Comptroller has issued a determination. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the

contract between the parties.

(4) *Petition to CDRB.* In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the Design-Builder, within twenty days thereafter, may petition the CDRB to review the Agency Head determination.

(i) *Form and Content of Petition by Design-Builder.* The Design-Builder shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute; the amount of money, if any, claimed; and the reason(s) the Design-Builder contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Design-Builder in the contractual dispute resolution process and to the Comptroller; and (v) copies of all correspondence with, and material submitted by the Design-Builder to, the Comptroller's Office. The Design-Builder shall concurrently submit four complete printed sets and one electronic set of the Petition and all exhibits: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Design-Builder shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

(ii) *Agency Response.* Within twenty days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the Design-Builder and make available to the CDRB all materials it submitted in the contractual dispute resolution process and to the Comptroller. Three complete printed copies and one electronic set of the agency response shall be submitted to the CDRB at OATH's offices and one to the Design-Builder. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty days. The Design-Builder shall have an opportunity to submit a reply to the agency response within ten days of receipt of the agency response.

(iii) *Further Proceedings.* The Board shall permit the Design-Builder to present its case by submission of the Petition, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the Design-Builder by submission of its Response, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the agency's case. Neither the Design-Builder nor the agency may support its case with any documentation or other material that was not considered in the contractual dispute resolution process or by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one ADR-Eligible Dispute between the parties for concurrent resolution. If the Board permits an oral



argument, the oral argument shall be scheduled within thirty days of receipt of the Design-Builder's reply to Agency Response, or longer if the parties agree.

(iv) CDRB Determination. Within forty-five days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

(v) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Design-Builder, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and 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.

(vi) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the Supreme Court of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with this section.

(c) Contract Administration. Except as provided in subdivision (b)(1) and (b)(2) of this Section or as otherwise stated in these Rules, Chapter 4 of these Rules titled Contract Administration shall apply to all contracts for Design-Build Services, including design-build contracts.

(1) Contract changes pursuant to Section 4-02 of these Rules shall not preclude the Design-Build contract from agreeing to Extra Work funded through allowances and approved under the contract or restrict the ability to agree to modifications as authorized by Chapter 749 of the laws of 2019;

(2) Renewals pursuant to Section 4-04 of these Rules are not permitted in design-build contracts.

(3) Buy-against Procurements pursuant to Section 4-07 of these Rules are not permitted in Design-Build Services contracts.

#### **§ 4. SUBDIVISION (B) OF SECTION 4-04 OF CHAPTER 4 OF TITLE 9 OF THE RULES OF**

**THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:**

(b) *Renewals Not Permitted.* Unless specifically contracted for, as in contracts containing an option to renew, renewals shall not be permitted where:

(1) additional quantities of goods are required, except in the case of goods acquired through requirements contracts (which shall be subject to the contract term extension limitations in Section 4-02(b)(1)(iii) of these Rules[, or];

(2) except as provided in Sections 4-02(b)(1)(ii) and 4-02(b)(1)(iii) of these Rules, a continuation of types of services is required, the procurements shall be made by new solicitations by one of the appropriate methods of source selection set forth in these Rules;  
or

(3) the procurement was made pursuant to Section 3-17.

**§ 5. SUBDIVISION (B) OF SECTION 4-07 OF CHAPTER 4 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS RE-LETTERED AS SUBDIVISION (C), AND A NEW SUBDIVISION (B) IS ADDED, TO READ AS FOLLOWS:**

(b) *Applicability.* Buy-against Procurements are not permitted in design-build procurements pursuant to Section 3-17(c)(3) of these Rules.

([b]c) *Notice of Vendor Selection.*

**§ 6. SUBDIVISION (A) OF SECTION 4-09 OF CHAPTER 4 OF TITLE 9 OF THE RULES OF THE CITY OF NEW YORK IS AMENDED TO READ AS FOLLOWS:**

(a) *Applicability.* Except as provided in (1), [and] (2), and (3) below, 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 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.

(3) Notwithstanding paragraph (2) of this subdivision, this section shall not apply to contracts for the procurement of Design-Build Services pursuant to Section 3-17 of these Rules.