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PROCUREMENT POLICY BOARD

PUBLIC MEETING

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April 8, 2013

12:07 p.m.

253 Broadway

14th Floor Conference Room

New York, New York

TRANSCRIPT OF PROCEEDINGS

BEFORE: JENNIFER JONES AUSTIN

Reported By:

Therese Sturges

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2	APPEARANCES:
3	
4	Jennifer Jones Austin, Chair of the PPB, Chief
5	Executive Officer/Executive Director, Federation of Protestant Welfare Agencies
6	Catherine S. Banat, Special Assistant to CIO, Bureau of Asset Management
7	
8	Michael Best, PPB Board Member, Counselor to the Mayor
9	Valerie Budzik, PPB Board Member, Deputy Comptroller for Legal Affairs/General
10	Counsel, Comptroller's Office
11	Lisette Camilo, Deputy General Counsel, Mayor's Office of Contract Services
12	
13	Caitlin Caporale, Policy Advisor, Mayor's Office of Contract Services
14	Louisa Chafee, Director of HHS Accelerator/Department Director, Mayor's
15	Office of Contract Services
16	Steven Stein Cushman, Chief, Contracts and Real Estate Division, New York City Law
17	Department
18	Tony Dell'Olio, Agency Chief Contracting Officer/Associate General Counsel,
19	Comptroller's Office
20	Lisa Flores, Deputy Director, Mayor's Office of Contract Services
21	Howard Friedman, Deputy Chief, Contracts and Real
22	Estate Division, New York City Law Department
23	Andrea Glick, Director/City Chief Procurement
24	Officer, Mayor's Office of Contract Services
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2	A P P E	A R A N C E S (Continued):
3		
4	Robina (Gumbs, Senior Counsel, Contracts and Real
5		Estate Division, New York City Law Department
6	Shannon	Manigault, Legislative Counsel, New York
7		City Counsel
8	Thad Mc'	Tigue, Executive Director of Pensions, Comptroller's Office Bureau of Asset
9		Management
10	Emily Ne	ewman, Deputy Director of Policy and Special Projects/Chief of Staff, Mayor's Office of Contract Services
11		
12	Ross Sai	ndler, PPB Board Member, Professor of Law Director of the Center for New York City Law
13	- a	
14	Larry So	chloss, Deputy Comptroller for Asset Management, Chief Investment Officer for the Comptroller's Office Bureau of Asset
15		Management Sollies Baleau of Abbee
16	Caroline	e Silk, Senior Counsel with the New York City Law Department
17		
18	Geneith	Turnbull, Deputy Comptroller of Contracts, Comptroller's Office
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1	Procurement Policy Board - 4/8/13
2	MS. JONES AUSTIN: I'm going
3	to call the PPB into session. This
4	actually being my second meeting of
5	the PPB, I may not be clear on all the
6	rules and formalities, but for now we
7	are going to call this meeting into
8	session and we have an agenda before
9	us I'm going to walk through.
10	Very quickly, I just want to
11	make sure I know all of the people in
12	the room. So why don't we walk around
13	the table and we'll begin with me and
14	we will go all the way around.
15	Jennifer Jones Austin,
16	Procurement and Policy Board, and in
17	one of my other jobs I am the head of
18	the Federation of Protestant Welfare
19	Agencies.
20	MR. SANDLER: I'm Ross
21	Sandler, member of the PPB and a
22	Professor of Law at New York Law
23	School.
24	MS. GUMBS: Robina Gumbs and
25	I'm Senior Counsel with the New York

- 1 Procurement Policy Board 4/8/13
- 2 City Law Department.
- 3 MS. SILK: Caroline Silk, I'm
- 4 Senior Counsel with the New York City
- 5 Law Department.
- 6 MR. FRIEDMAN: Howard
- 7 Friedman, Law Department.
- 8 MR. STEIN CUSHMAN: Steven
- 9 Stein Cushman, Law Department.
- MR. DELL'OLIO: Tony
- 11 Dell'Olio, City Counsel, Comptroller's
- 12 Office.
- MS. TURNBULL: Geneith
- 14 Turnbull, Comptroller's Office.
- MR. McTIGUE: Thad McTigue,
- 16 Comptroller's Office.
- 17 MR. SCHLOSS: I'm Larry
- 18 Schloss. I'm the Deputy Comptroller
- 19 for Asset Management and Chief
- 20 Investment Officer for The
- 21 Comptroller's Office.
- MS. CAPORALE: Caitlin
- Caporale, MOCS.
- MS. MANIGAULT: Shannon
- 25 Manigault, City Counsel.

1 Procurement Policy Board - 4/8/13 2 MS. NEWMAN: Emily Newman, Chief of Staff at MOCS. 3 4 MS. CAMILO: Lisette Camilo, 5 MOCS. MS. FLORES: Lisa Flores, 6 MOCS. 7 MS. GLICK: Andrea Glick, City 8 Chief Procurement Officer of MOCS. 9 MS. CHAFEE: Louisa Chafee. 10 I'm here as the Director of HHS 11 12 Accelerator. 13 MS. BUDZIK: Valerie Budzik, Deputy Comptroller for Legal Affairs 14 15 and Counsel, New York City 16 Comptroller's Office, and member of 17 the PPB. MR. BEST: Michael Best and 18 19 I'm a member of the PPB and I'm 20 Counselor to the Mayor. 21 MS. JONES AUSTIN: Let us 22 begin. We're going to begin with the 23 vote on the adoption of rules. Who is 24 going to walk us through? Do you want

25

to begin?

1	Procurement Policy Board - 4/8/13
2	MS. GLICK: I guess I will.
3	MS. JONES AUSTIN: Okay.
4	MS. GLICK: So we have three
5	rules to vote on now for adoption.
6	First one is the Best Value PPB rule
7	and there are some changes that had to
8	be made to various rules throughout
9	the book to update them to include the
LO	Best Value language.
L1	Did you want to go through all
L2	of those one at a time?
L3	MS. JONES AUSTIN: I was just
L3 L4	
	MS. JONES AUSTIN: I was just
L4	MS. JONES AUSTIN: I was just going to say, is everybody familiar
L4 L5	MS. JONES AUSTIN: I was just going to say, is everybody familiar with them and we can do this by
L4 L5 L6	MS. JONES AUSTIN: I was just going to say, is everybody familiar with them and we can do this by walking through them or we can ask if
L4 L5 L6 L7	MS. JONES AUSTIN: I was just going to say, is everybody familiar with them and we can do this by walking through them or we can ask if there are any questions, just kind of
L4 L5 L6 L7	MS. JONES AUSTIN: I was just going to say, is everybody familiar with them and we can do this by walking through them or we can ask if there are any questions, just kind of do it by consent?
L4 L5 L6 L7 L8	MS. JONES AUSTIN: I was just going to say, is everybody familiar with them and we can do this by walking through them or we can ask if there are any questions, just kind of do it by consent? MS. GLICK: It's up to you.
L4 L5 L6 L7 L8 L9	MS. JONES AUSTIN: I was just going to say, is everybody familiar with them and we can do this by walking through them or we can ask if there are any questions, just kind of do it by consent? MS. GLICK: It's up to you. MS. BUDZIK: We're familiar
L4 L5 L6 L7 L8 L9 20	MS. JONES AUSTIN: I was just going to say, is everybody familiar with them and we can do this by walking through them or we can ask if there are any questions, just kind of do it by consent? MS. GLICK: It's up to you. MS. BUDZIK: We're familiar with the changes that you made from

MR. BEST: I'm familiar with

1 Procurement Policy Board - 4/8/13 2 them, yes. 3 MS. GLICK: Okay. 4 MS. JONES AUSTIN: Still, we can ask for a motion to adopt the 5 6 rules. MS. GLICK: We should cite 7 what rules there are. 8 MR. BEST: I'll move to adopt 9 PPB Rules 1-01, 2-11, 3-01, 3-02, 3-03 10 11 and 4-01. MS. JONES AUSTIN: Is there a 12 13 second? 14 MR. SANDLER: I'll second. 15 MS. JONES AUSTIN: All in 16 favor? 17 (Chorus of ayes) MS. JONES AUSTIN: All 18 19 opposed? 20 (No response) 21 MS. JONES AUSTIN: So moved. 22 MS. GLICK: Thank you. Okay. 23 MS. JONES AUSTIN: We will 24 move on to the next, micropurchase.

MS. GLICK: The next is to

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1
             Procurement Policy Board - 4/8/13
 2
         make changes to the small purchase
 3
         rule, 3-08, to allow for the
         micropurchase to be raised from $5,000
 4
 5
         to $20,000. Does anybody have any
         questions on that rule?
 6
                 MR. SANDLER: Were you able to
 7
         get the word micropurchase in this
 8
 9
         rule?
                 MS. GLICK: We have to add it
10
11
         now.
                 MR. FRIEDMAN: We talked about
12
         it in the office and in
13
         3-08(c)(1)(ii), which starts out "For
14
15
         procurements the value of which is
16
         $20,000 or less," we would suggest
17
         right after the word "less" putting in a
         parenthetical and put the word
18
19
         "micropurchases" in quotation marks.
20
                 MS. BUDZIK: So that's
21
         (c)(1) Romanette (ii)?
22
                 MR. SANDLER: Yes.
23
                 MR. FRIEDMAN: 3-08(c)(1)(ii).
24
         Yes, Romanette (ii). In the first
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line of it.

1	Procurement Policy Board - 4/8/13
2	MR. SANDLER: Can you just
3	explain why you want to do it that
4	way, just call this micropurchases
5	rather than small purchase limits?
6	MR. STEIN CUSHMAN: Because a
7	micropurchase is a subset of small
8	purchases. So the rule as a whole
9	still needs to retain the structure of
10	small purchases because small
11	purchases label applies to both.
12	Micropurchases, there are
13	other ways you could do it, but the
14	idea is to use the nomenclature that
15	we use in reporting outside of the
16	context of the PPB rules. When we
17	report on micropurchases, we call
18	them micropurchases.
19	So if they are anything
20	below, currently 5,000 or 20,000, I
21	think if you defined it in Romanette
22	(ii) "For the procurements the value of
23	20,000 or less" and defined that as
24	micropurchases, that would solve that.
25	That would allow you to use the term.

1	Procurement Policy Board - 4/8/13
2	You could put it some place
3	else if you'd rather. That's not the
4	only place you could put it. You
5	could, for example, start out
6	Romanette (ii) with a label that says
7	"Micropurchases," period, and then say
8	"For procurements the value of which,"
9	which would make it clear that all of
10	(ii) is about micropurchases. That
11	would be another alternative.
12	MR. SANDLER: Is that an
13	alternative that's okay with you guys?
14	MR. FRIEDMAN: I think it's
15	important to keep the overall title to
16	these small purchases because that's
17	what the charter refers the charter
18	doesn't refer to micropurchases. It
19	only refers to small purchases and,
20	thus, has to be adopted by the current
21	action with the Counsel like any other
22	changes to small purchases, but
23	otherwise anywhere within (c)(1)
24	Romanette (ii).
25	MR. STEIN CUSHMAN: Do we care

1	Procurement Policy Board - 4/8/13
2	whether you start with it or put it
3	MR. FRIEDMAN: No.
4	MR. STEIN CUSHMAN: Yes,
5	either way works with us.
б	MR. SANDLER: I would prefer
7	to start with (ii), just for ease of
8	finding it in the rules. When
9	people people use the term
10	colloquial, you know. So to be able
11	to find it in the rules would make it
12	a little more efficient. So if that's
13	what you want, I would like it I
14	would suggest that it go there.
15	MS. BUDZIK: So where is it?
16	MR. STEIN CUSHMAN: It would
17	be at the beginning of Romanette 2.
18	So 3-08(c)(1) Romanette (ii), the
19	first word would be "Micropurchases."
20	There would be a period, probably would
21	underline it, and then begin with the
22	rest of the text, "For procurements the
23	value of which is 3,000 or less," and
24	just continue.

MS. JONES AUSTIN: Okay.

1 Procurement Policy Board - 4/8/13 2 MR. SANDLER: Would that need 3 a motion, to add that rule? 4 MR. FRIEDMAN: I think you 5 would need to make a motion to adopt the rule. 6 MR. BEST: I second that. 7 MS. JONES AUSTIN: Just make a 8 9 motion. MR. SANDLER: Do I explain the 10 11 motion? 12 MS. JONES AUSTIN: To adopt the rules and --13 14 MR. SANDLER: No, to amend the 15 rule. MS. JONES AUSTIN: Amend the 16 rule, but he was saying adopt the rule 17 as amended. So let's just make sure 18 19 we have the language clear. 20 MR. BEST: Do we have to make 21 a motion to amend this proposed rule 22 first or do we... 23 MR. FRIEDMAN: Our practice 24 has been to adopt or not adopt the

rule as amended in the discussion.

- 1 Procurement Policy Board 4/8/13
- 2 MR. BEST: Okay. Well, that's
- 3 fine.
- 4 MR. FRIEDMAN: The motion is
- 5 to adopt the rules as we've discussed
- 6 with the word "Micropurchase" in the
- beginning.
- 8 MR. SANDLER: I'm going to
- 9 move.
- 10 MR. BEST: I'll second that.
- 11 MS. JONES AUSTIN: All in
- 12 favor?
- (Chorus of ayes)
- MS. JONES AUSTIN: Okay.
- 15 Let's move on to PPB Rule 2-07.
- 16 MS. GLICK: Okay. So in 2-07,
- on non-responsive, there were some
- 18 changes made to that. Do you want me
- 19 to read them?
- 20 MS. BUDZIK: Yes. That, I'm
- 21 not familiar with.
- MS. GLICK: You have a copy of
- 23 it. Okay.
- 24 "Rejection of bids or
- 25 proposals. Bids or proposals that

1	Procurement Policy Board - 4/8/13
2	fail to perform to standards set forth
3	above shall be rejected unless the
4	ACCO determines in writing that
5	waiving the non-performance would not
6	deprive the agency of the assurance
7	that the contract will be performed
8	according to its specified
9	requirements and would not adversely
10	affect the competition by placing a
11	bidder in a position of advantage over
12	other bidders or by otherwise
13	undermining the competition."
14	Does anyone have any
15	questions?
16	MR. SANDLER: I'm sorry I
17	didn't bring this up before, but in
18	writing, is there a time requirement
19	and is the writing going to be filed
20	with the contract record, all of that,
21	or do other provisions make that
22	clear?
23	MS. GLICK: It has to be kept
24	with the contract record.
25	MR. STEIN CUSHMAN: It would

1 Procurement Policy Board - 4/8/13 2 be part of the contract file, 3 permanent contract file. There's not a timeframe on when the ACCO made that 5 permanent. They would have to make a determination prior to moving forward 6 with an award or, I guess, if they had 7 found it non-responsive they wouldn't 8 be making that determination. 9 10 There currently is not a 11 timeframe in the rules for when you must make a non-responsive 12 determination. 13 MS. BUDZIK: If there is 14 15 something, it would come up at any 16 point. 17 MR. STEIN CUSHMAN: Well, in 18 theory, you could notice it at some 19 point. At any point in time you could 20 notice that there's something that's 21 non-responsive about it. 22 MR. SANDLER: But this is a 23 waiver. 24 MR. STEIN CUSHMAN: Yes. And

what this is, this change would bring

1	Procurement Policy Board - 4/8/13
2	the city rules into conformity with
3	state law. There are state law cases
4	interpreting responses, and that's
5	under GML 103, where they use
6	essentially this standard for
7	determining whether or not a variation
8	from the bid is enough to throw the
9	bid out.
10	Our rules were stricter than
11	the state law was. So this is meant
12	to bring us into conformity with the
13	state law and allow you to make the
14	determination that the change was
15	insignificant enough that it didn't
16	affect the competition and didn't
17	change the terms of what they were
18	providing.
19	MR. SANDLER: So this applies
20	to RFPs as well?
21	MR. STEIN CUSHMAN: Yes, it
22	could.
23	MR. SANDLER: So when the bids
24	are open, when would the bidder be

able to see or find that their methods

1	Procurement Policy Board - 4/8/13
2	are adverse to this? When would that
3	bidder find out enough about their
4	methods to be the reason?
5	MR. STEIN CUSHMAN: Well, if
6	the agency were to find them
7	non-responsive, that would be shown in
8	writing. The agency would have to do
9	so in writing and provide notes to the
10	vendor.
11	It would typically happen
12	promptly after submission of proposals
13	or a bid, if the rules don't specify a
14	precise time period for it. But it
15	would happen in the beginning
16	typically. In the beginning.
17	MR. SANDLER: What is that?
18	I'm sorry, I just don't
19	remember those things. How much time
20	does an unhappy bidder have to
21	protest?
22	MR. STEIN CUSHMAN: Once they
23	receive the notice of being
24	non-responsive, I believe they have
25	ten days.

1	Procurement Policy Board - 4/8/13
2	MR. SANDLER: How much time
3	does a person who finds themselves on
4	the wrong side of this waiver have to
5	appeal that?
6	MR. FRIEDMAN: It's the same
7	protest rule, ten days from the
8	time
9	MS. GLICK: Ten days.
10	MR. SANDLER: So if there's
11	only ten days, shouldn't there be some
12	time in the rule that they have to
13	file this, make it available? The ten
14	days could go fast, though.
15	MR. STEIN CUSHMAN: Ten days
16	is our normal timeframe for appealing
17	an adverse decision.
18	MR. BEST: I'm not sure sort
19	of what you're getting at. This is
20	not as I read this but this is
21	something that ACCO would do as to
22	part of the responsiveness, whether or
23	not to reject the bid. And then
24	instead, they get ten days from the
25	point when that decision is made, not

1	Procurement Policy Board - 4/8/13
2	whenever it's made.
3	It's not a matter of you
4	know, their ten days are going to get
5	eaten up by an extra amount of time
6	that ACCO needs in order to make this
7	determination. It's ten days from the
8	determination when the adverse
9	decision gets made.
10	MR. FRIEDMAN: And this
11	particular determination is to the
12	benefit of the particular bidder or
13	proposer in question. So it would be,
14	we thought you were non-responsive,
15	but because of the looser standards,
16	in fact, you're now found responsive.
17	The person who would want to complain
18	about that is the
19	MR. SANDLER: Second.
20	MS. JONES AUSTIN: Right.
21	MR. SANDLER: When does that
22	person get to know
23	MR. FRIEDMAN: Ten days from
24	when they were issued.

MS. JONES AUSTIN: So say

1	Procurement Policy Board - 4/8/13
2	they don't learn until the awarding of
3	the contract, then it's ten days from
4	that date, but I guess how would the
5	party who might feel that it was
6	disadvantaged know that the bidder is
7	non-responsive?
8	MR. STEIN CUSHMAN: If the
9	bidder is found non-responsive or the
10	other ones?
11	MR. FRIEDMAN: No, the bidder.
12	MS. JONES AUSTIN: How would
13	the individual or the organization
14	that believes that it has now been
15	compromised or the process has been
16	compromised in a disadvantageous way
17	towards that bidder because the
18	non-responsive party has gotten the
19	waiver, how would that initial party,
20	that first party, be known?
21	MS. BUDZIK: So there's no
22	kind of duty to notify other bidders
23	or opposers that you're waiving a
24	non-responsive.
25	MR. FRIEDMAN: And a

1	Procurement Policy Board - 4/8/13
2	determination would be part, as Steve
3	said earlier, because it's a
4	determination it would go in with the
5	RFP. It would go in with the contract
6	to the Comptroller's office.
7	MR. STEIN CUSHMAN: I don't
8	believe there is a notice of an
9	affirmative finding of responsiveness.
10	MR. FRIEDMAN: Right.
11	MR. BEST: And this does not
12	in any way change it appears to me
13	anyway, this does not in any way
14	change the current practice in terms
15	of when people know that another
16	bidder has been found responsive or
17	not. And So if you're a losing
18	bidder right now, you find out at
19	whatever point you find out and you
20	have ten days to appeal something from
21	that, but this would not change that
22	in any way.
23	MR. FRIEDMAN: No. There
24	would just be another piece of paper.
25	MR. STEIN CUSHMAN: Right.

1	Procurement Policy Board - 4/8/13
2	MR. FRIEDMAN: If you're the
3	low bidder and I'm the second bidder
4	and you're found responsive and, in
5	fact, there was nothing wrong with
6	your bid, I might want to challenge,
7	I might want to check something out.
8	All this does is create a
9	situation where you're the low bidder,
10	you have a minor informality, you're
11	found responsive, and I might want to
12	look into it or not.
13	MS. GLICK: A minor
14	informality will help you in the
15	bidding process because if, you know,
16	there's a stray mark or you didn't
17	initial some change in pen or you
18	forgot but you're the low bidder, it
19	will be beneficial for the city to be
20	able to accept you.
21	MS. BUDZIK: So if you were
22	found non-responsive then this rule
23	doesn't change anything from what is
24	currently the case. In the notice, you
25	have to state the award unless the

1	Procurement Policy Board - 4/8/13
2	action determines not to state the
3	award and if, you know, waiving this
4	minor informality although you're not
5	looking to appeal that.
6	MR. BEST: It seems to me it's
7	advantageous to the city and there's
8	no real disadvantage created to
9	bidders. So
10	MR. SANDLER: Well, there is a
11	disadvantage and I don't know how I
12	think about it, but if you are the
13	second lowest bidder and you discover
14	that not only that what happened was
15	there was a non-conformity deemed to
16	be non-important and you take
17	advantage of the city and that there
18	was an actual decision about this and
19	you hadn't found out about it until
20	too late to appeal, then you might
21	feel that somehow or another this was
22	not a very fair system.
23	MR. BEST: Well, but if you
24	have a should have known or shouldn't

have known standard, which is what we

- 1 Procurement Policy Board - 4/8/13 2 have, presumably that is taken care by 3 the fact that you didn't know. MR. SANDLER: It certainly is a requirement to be on top of your 5 There's no question. 6 game. MS. BUDZIK: I mean, it's 7 not -- when there's a minor rules 8 violation, then that is accomplished. 9 10 MR. SANDLER: I'm sorry, would 11 you repeat that? 12 MS. BUDZIK: I mean, this is somewhat analogous to a reminder. Are 13 you looking for some transparency on 14 15 the... 16 MR. SANDLER: Do you have litigation over this sort of issue? 17 MR. STEIN CUSHMAN: Well, at 18 19 the moment we would have to find 20 people non-responsive. Litigation 21 would be that you found them 22 non-responsive and they're complaining 23 about it.
- MS. BUDZIK: The case law you referred to, was that recent?

1	Procurement Policy Board - 4/8/13
2	MR. STEIN CUSHMAN: It's the
3	last ten years maybe.
4	MR. SANDLER: It's still good.
5	MS. BUDZIK: Well, I meant is
6	there a recent case that prompted you?
7	MR. STEIN CUSHMAN: Well,
8	there was a recent fact pattern
9	that I don't know how recent it
LO	was, but somebody brought me sort of a
L1	story of a million dollar bid where it
L2	had multiple items. One of the items
L3	was, you know, a very small dollar
L4	figure, like \$2,000, and they had
L5	changed it on the bid but they had
L6	changed it in pencil rather than pen.
L7	And so they had an item that
L8	was apparently small value on a very
L9	large bid where they were the low
20	bidder by a very large sum and they're
21	trying to figure out what do I do
22	because the rules make it quite clear
23	the changes can't be initialed in pen
24	they can't be initialed in pencil
25	but you have got a change on a very

1	Procurement Policy Board - 4/8/13
2	small number. What do you do?
3	That was the fact pattern that
4	had us start thinking about what we
5	should it would be better for the
6	city if we brought the standard in
7	line with what the state law was.
8	You could incorporate a
9	notification requirement if you wanted
10	to.
11	MR. SANDLER: I'm not inclined
12	to require that. But I'd ask that you
13	look into that, how this will actually
14	work with respect to, you know, the
15	bidders who suddenly find themselves,
16	you know, in a position where there
17	was a waiver. And for some aspect of
18	the bid and that they how are they
19	going to find out about this and what
20	rights do they have concerning waivers
21	to our rules.
22	As it's written it's okay, but
23	I certainly see problems could arise
24	with prospective bidders who would
25	like to have the opportunity to

- 1 Procurement Policy Board - 4/8/13 2 challenge that. 3 MS. BUDZIK: And consistency 4 in application throughout the various 5 agencies, consistency in the way when waivers are granted and when they're 6 7 not. MR. FRIEDMAN: Well, the 8 waivers themselves will -- The 9 Comptroller's office is part of the 10 11 registration practice. MS. JONES AUSTIN: You have to 12 provide documentation of the things 13 and for the waiver you need it. 14 15 MR. FRIEDMAN: All 16 determinations. 17 MR. STEIN CUSHMAN: Writing. It has to be in writing. 18 19 MR. FRIEDMAN: And all determinations go to the Comptroller's 20 21 office as part of the RFP. 22 MS. GLICK: Just like the non-responsive determinations also.
- MS. BUDZIK: Right. No, I 24 25 understand how you could see it.

1 Procurement Policy Board - 4/8/13 2 MS. GLICK: yes. 3 MS. JONES AUSTIN: So with the 4 comments having been presented, are we 5 prepared to vote? 6 (No response) MS. JONES AUSTIN: Motion? 7 MR. BEST: I'll move it. 8 MS. JONES AUSTIN: To be 9 10 adopted as written? 11 MR. BEST: As written, yes. MS. JONES AUSTIN: Second? 12 13 MR. SANDLER: I'll second it. 14 MS. JONES AUSTIN: All in 15 favor? 16 (Chorus of ayes) 17 MS. JONES AUSTIN: Opposed? 18 (No response) 19 MS. JONES AUSTIN: Abstention? 20 MS. BUDZIK: I will support. 21 MS. JONES AUSTIN: Will 22 support. 23 All right. Thank you. 24 Let's move on to the rules that

are to be voted into the CAPA.

1	Procurement Policy Board - 4/8/13
2	MS. GLICK: Do we want to do
3	the court first?
4	MS. JONES AUSTIN: Is there
5	time?
6	MR. BEST: I suggest to the
7	Chair that perhaps we could move
8	Item 3 up in front of Item 2 first.
9	MS. JONES AUSTIN: Let's do
10	it.
11	MR. SCHLOSS: I'll be brief.
12	So as you all know, the five New York
13	City pension funds are \$137 billion,
14	the fifth largest system in the United
15	States. We have a hundred managers
16	that trade public securities that
17	currently use the RFP process.
18	Manager selection and the
19	asset allocation are the most critical
20	components of the successful and best
21	performance. We believe the current
22	RFP process is sub-optimal. There's
23	four objectives of the new process.
24	One is increased and improved
25	competition. The method by which we

1	Procurement Policy Board - 4/8/13
2	get that is this process accesses the
3	entire universe of production managers
4	by way of our five independent
5	consultants. They're fiduciary to
6	each of their respective pension
7	files, as opposed to the current
8	process that only allows us to pick
9	managers from those who apply.
10	So that the entire universe
11	of typical management contracting that
12	we're looking for is probably several
13	hundred. And typically we get people,
14	twenty to thirty applicants. So we're
15	missing a large number of the universe
16	that may be the best managers.
17	In addition, the new process
18	allows us to consider managers that
19	are currently closed from taking on a
20	new investment mandate that might open
21	up in the future. And the current
22	process does not allow us to
23	potentially contact them or engage
24	with them in the future.
25	The second objective is, of

1	Procurement Policy Board - 4/8/13
2	course, to seek the highest
3	performance managers to increase
4	performance. The current processes
5	only allows us to pick managers who
6	apply. Sometimes the top two, three,
7	four, five, ten managers don't apply.
8	But looking at the entire universe,
9	you don't truncate the potential to
LO	get the best manager.
L1	Three, it dramatically
L2	shortens the process. In the four
13	years prior to the Comptroller's
L4	arrival, the average procurement took
L5	seventeen months. Under this new
L6	process, the average procurement is
L7	down to five months.
L8	The reason that's important is
L9	that hiring managers sometimes need
20	to react to markets and, at minimum,
21	to have the ability to contract with
22	markets with managers is extremely
23	important and it can enhance overall
24	performance. So shortening the
25	procurement time period while opening

1	Procurement Policy Board - 4/8/13
2	it up to as many candidates as
3	possible should increase the
4	performance of the funds.
5	Certainly not last is cost.
6	Increased competition typically lowers
7	cost. So for those four reasons we
8	set about this new process. I'll
9	quickly explain the new process to
10	you.
11	The new process we put an
12	ad in trade publications Institutional
13	Investor, City Record. We tell our
14	consultants who have worked on the
15	guidelines for the procurement of
16	fiduciaries to The Boards. Each of
17	the five consultants currently under
18	hire for The Boards are Callan
19	Associates, Rocaton, NEPC, SIS, and
20	Buck Associates.
21	So the process is to put the
22	ads The Boards approve, the five
23	boards or the four boards or the
24	number of boards that actually require

procurement come up with the

1	Procurement Policy Board - 4/8/13
2	guidelines by which we will select our
3	managers and publish it. The managers
4	then go through their databases, it's
5	a database called eVestment, and all
6	the money managers implement their
7	data monthly. They go through the
8	qualitative knowledge of the managers
9	as well as the quantitative knowledge
10	of the managers. They come up with a
11	short list of recommendations for
12	us "us" being the Bureau of Asset
13	Management. We take all five draft
14	picks, if you will, and we have five
15	independent fiduciaries giving us
16	their best picks. We then look for
17	the consensus.
18	So if all five consultants
19	recommend somebody, we should probably
20	talk to that person, four out of five
21	or three out of five, until we get a
22	number that's large enough that can
23	handle our procurement needs. The
24	Bureau of Asset Management then does

due diligence on this short list,

1	Procurement Policy Board - 4/8/13
2	which is now, we can say, the best of
3	the best. We do our work as quickly
4	as possible.
5	We then go back to The Boards
6	with our recommendations as to who the
7	managers are to be selected for each
8	of The Boards, depending on the size
9	of the mandate for each of The Boards,
10	because The Boards the pension
11	funds vary from \$9 billion for the
12	Fire to \$49 billion for the teachers.
13	And then we go back, get them
14	approved, ideally with The Boards, and
15	then we're done.
16	So instead of reacting to
17	income, we would take the entire
18	universe, five fiduciaries, do what we
19	do, and from that pick the best,
20	recommend them to The Boards. That's
21	the process.
22	During the trial period, we
23	had six different RFPs. The first
24	Notice of Search went out May 2011 and
25	the final one went out April '12. We

1	Procurement Policy Board - 4/8/13
2	selected twelve managers. The
3	searches ranged from emerging market
4	equities to US small-cap, high-yield
5	bond United States, bank loans United
6	States, developed managers large-cap,
7	developed managers small-cap, EAFE,
8	E-A-F-E.
9	So it's a very, very broad
LO	universe of debt and fixed income
L1	products that we're testing this on.
L2	We feel very, very good about all the
L3	managers that The Board is hiring and,
L4	consequently, we recommend this
L5	process.
L6	That's basically as far as we
L7	got in the current RFP process.
L8	MR. SANDLER: How long are the
L9	typical contracts for the managers
20	that are actually managing?
21	MR. SCHLOSS: Typical contract
22	is three years plus two or three
23	extension years.
24	MR. SANDLER: So what are

the -- like this year, how many RFPs,

1	Procurement Policy Board - 4/8/13
2	you know, do you actually have?
3	If you have a hundred
4	managers, does that mean you do five a
5	year, ten a year?
6	MR. SCHLOSS: No. It sort of
7	depends on need. So if we had to
8	search for, say, small-cap U.F.A., if
9	we had that search three years ago,
10	the managers are fine, we leave it
11	alone.
12	But what sometimes happens is
13	we fire a bunch of managers along the
14	way for performance or for management
15	changes, we'll have not enough
16	managers for the capital that we're
17	employing. So we'll then start in on
18	our process.
19	What we have is a need. We
20	want to get the need filled as quickly
21	as possible. If we don't have
22	managers, it might be nine years until
23	we actually start another process for
24	that in particular. So what we've
25	done now is we did a number of the

1	Procurement Policy Board - 4/8/13
2	RFPs that we need during this whole
3	experience.
4	So we actually have very, very
5	few things sitting on the back burner,
6	if you will. But we probably will
7	have a new mandate for emerging market
8	debt management. So we'll have to
9	start a process.
10	It's just a question as to
11	when to start it. If we like this
12	process a lot, we would like to use
13	this process as soon as possible for
14	the window for the test period, but
15	MS. JONES AUSTIN: Tell me a
16	little bit, have you given any thought
17	to how to make sure that you control
18	against any type of fraud or collusion
19	of consultants in the sample?
20	MR. SCHLOSS: Well, first,
21	each of the consultants is hired by an
22	independent board. The teachers have
23	their consultant and their consultant
24	only works for the teachers. It
25	doesn't really matter who the

1	Procurement Policy Board - 4/8/13
2	consultant for the fire officers or
3	the firefighters' consultant is, so
4	they're independent of each other.
5	They report to the Bboard members in
6	that vicinity.
7	The Board members are
8	fiduciaries. The consultants are hired
9	as fiduciaries as well, so they're
10	operating as fiduciaries. They all
11	compete with each other. So an
12	accountant competes with a brokerage
13	manager on a day-to-day basis for
14	other clients and then eventually,
15	when their contract is up, they
16	compete with each other also.
17	And they keep track of their
18	recommendations. So they're actually
19	at top performance as well. They
20	might say, well, we recommend better
21	managers than the other consultants so
22	you could hire us. Not only do you
23	have two sets of fiduciaries, but
24	they're competing with each other.
25	One of the few things we like

1	Procurement Policy Board - 4/8/13
2	about this process is we have five
3	different professional organizations
4	coming up with their best picks and we
5	then take the consensus and pick. If
6	five of five consultants working
7	through 50 trustees recommend XY
8	and Z manager, that's probably a good
9	manager, so we should probably pick
10	that one.
11	We want the best. We want a
12	consensus that's the best.
13	MS. BUDZIK: So developing the
14	short it's not a collaborative
15	process?
16	MR. SCHLOSS: They're
17	independent. They're totally
18	independent picks. That's why we're
19	getting the if all five recommend
20	somebody, they just spent time picking
21	through them.
22	MR. SANDLER: So that means
23	what this rule would allow you to do
24	is you would have, effectively, a sole
25	source of negotiation with that

1	Procurement Policy Board - 4/8/13
2	recommended company?
3	MR. SCHLOSS: No, no. The
4	process starts with, say, all the
5	managers in that particular asset
6	planning. They'll get high-end
7	managers. We start with all the
8	high-end managers. Five different
9	sets of consultants go through that,
LO	come up with a list, and the list is
L1	typically twelve to fifteen managers.
L2	We have so much money that we
13	need multiple managers. There's no
L4	one asset-to-asset any more. Say for
L5	instance, high-yield, we have
L6	\$10 billion in high-yield. Of the
L7	\$10 billion in high-yield we need
L8	multiple seven asset managers, all
L9	with the same mandate. So that
20	the teachers might have five of the
21	seven; NYCERS might have a different
22	five of the seven; the fire guys might
23	have two of the seven. Each one has a
24	different contract with each pension
25	fund and there's a lot to conquer.

1	Procurement Policy Board - 4/8/13
2	On the other hand, we try to
3	get the economy of scale. So if
4	there was actually a requirement and
5	we picked each of the five different
6	Boards, then we would get the combined
7	power of all these and we're left with
8	a billion dollars.
9	Here's the price range we're
10	taking from that billion dollars. So
11	the fire department, the smallest part
12	of that billion, gets to pick their
13	pension fund. Obviously, they might
14	only get a hundred million, but we
15	could negotiate that later. It's a
16	billion dollars for the city pension
17	funds.
18	So we get all peak independents
19	from the system, leverage from the
20	system. We get their independent
21	consultants, as they do it, and the
22	selection process from the managers.
23	MS. JONES AUSTIN: Any other
24	questions?
25	(No response)

1	Procurement Policy Board - 4/8/13
2	MR. SCHLOSS: Thank you.
3	MS. JONES AUSTIN: Thank you.
4	Why don't we now go back and
5	take a look at the rules and go back
6	for this particular one.
7	MS. GLICK: So we have, I
8	guess that's 3-15 we're going to
9	number it. I'm just thinking of the
10	procurement rule which is now this
11	process that Larry just described.
12	MS. BUDZIK: So I'll make the
13	motion that it should be voted into
14	CAPA.
15	MR. STEIN CUSHMAN: If I may,
16	I think the proposal is to be voted
17	into CAPA, not only the proposed 3-15
18	for both the manager search and
19	pension, but also for changes to
20	1-01, the definition section. We have
21	four definitions as well.
22	So we want to make a motion,
23	maybe, to cover both.
24	MS. BUDZIK: I'll make a

25 motion to vote 3-15 and related

1 Procurement Policy Board - 4/8/13 2 changes in the CAPA. 3 MR. BEST: I second it. 4 MS. JONES AUSTIN: All in favor? 5 (Chorus of ayes) 6 MS. JONES AUSTIN: Opposed? 7 8 (No response) MS. JONES AUSTIN: So moved. 9 MS. GLICK: I'm afraid we went 10 11 a little out of order. MS. JONES AUSTIN: 12 That's 13 okay. MS. GLICK: So the next rule 14 15 is 3-05, which will unconform the rule 16 to our new micropurchase rule. Right 17 now in 3-05 it says "The sole source starts at those procurements that are 18 19 10,000 and above, "but since we now 20 just changed our small purchase 21 micropurchase rule, we want to conform 22 that so that the sole source will 23 start at above \$20,000. 24 MS. JONES AUSTIN: Questions? 25 (No response)

1	Procurement Policy Board - 4/8/13
2	MS. JONES AUSTIN: Any motion?
3	MR. BEST: I'll move that
4	proposal.
5	MR. SANDLER: I will second.
6	MS. JONES AUSTIN: All in
7	favor?
8	(Chorus of ayes)
9	MS. JONES AUSTIN: Opposed?
10	(No response)
11	MS. JONES AUSTIN: So moved.
12	2-09?
13	MS. GLICK: This is to conform
14	the recommendation for the award rule with
15	what we just discussed with the Best
16	Value changes. So if you want, we can
17	go over that. Do we need to go over
18	that?
19	MS. JONES AUSTIN: Does anyone
20	have any questions?
21	(No response)
22	MS. JONES AUSTIN: Okay.
23	Motion?
24	MR. BEST: I'll move it.
25	MS. JONES AUSTIN: Second it?

1	Procurement Policy Board - 4/8/13
2	MR. SANDLER: I'll second.
3	MS. JONES AUSTIN: All in
4	favor?
5	(Chorus of ayes)
6	MS. JONES AUSTIN: Opposed?
7	(No response)
8	MS. JONES AUSTIN: So moved.
9	MS. GLICK: The last rule to
10	vote into CAPA is the HHS Accelerator
11	rule. Does anybody want to talk about
12	that or we need to describe it again?
13	MS. JONES AUSTIN: Anyany
14	questions?
15	(No response)
16	MS. GLICK: Do you have
17	comments, questions?
18	MS. BUDZIK: The Mayor's
19	Office of Contract Services and the
20	HHS Accelerator office did give The
21	Comptroller's Office a briefing on the
22	rule, so we're familiar with it. In
23	reviewing it, we have a few concerns
24	that we would want to discuss with
25	MOCS and Lisette.

1	Procurement Policy Board - 4/8/13
2	We got a briefing on the
3	Accelerator rule and we're prepared to
4	support it going into CAPA. We did have
5	a few concerns we'd like to discuss with
6	Lisette and MOCS, which would be
7	during the ballot process.
8	Specifically I mean, in general,
9	the rule achieves its purpose of
10	streamlining the process and it
11	doesn't diminish competition for
12	reasons like there's a 90-day period
13	for reviewing, prequalification of
14	applications. If you do not finish
15	your review within that 90-day period,
16	the application is viewed denied.
17	That, we think, requires some
18	discussion.
19	The other concern of ours was
20	of the actual proposal. The RFP if
21	you will, is allowed to be
22	pre-existing for only ten days and
23	we're concerned that that is a very
24	short period of time and, I would say,

particularly early on in the process.

1	Procurement Policy Board - 4/8/13
2	I think the figure was you have like
3	three thousand vendors in the client
4	service community and right now about
5	three hundred of them have been
6	prequalified.
7	So the ten-day period for an
8	RFP, you know, if those stats don't
9	prove significant, obviously that
10	won't have to be accommodated. But,
11	again, those are discussions that
12	would help the process. We're happy
13	going through the CAPA otherwise.
14	MS. GLICK: Okay. So we could
15	set up time to go through those
16	concerns.
17	MS. JONES AUSTIN: So we're
18	going to vote on the HHS Accelerator
19	rules. Do I have a motion?
20	MR. BEST: I'll move it.
21	MS. JONES AUSTIN: Second?
22	MR. SANDLER: Second.
23	MS. JONES AUSTIN: All in
24	favor?
25	(Chorus of ayes)

1	Procurement Policy Board - 4/8/13
2	MS. JONES AUSTIN: Opposed?
3	(No response)
4	MS. JONES AUSTIN: So moved.
5	MR. STEIN CUSHMAN: One
6	technical clarification, since the
7	Board just voted the investment
8	manager in as a new 3-15, I assume
9	that this CAPA is a 3-16 so that they
10	have a different number than that.
11	MS. JONES AUSTIN: All right.
12	Any other business?
13	(No response)
14	MS. JONES AUSTIN: We will
15	receive notice of a CAPA hearing.
16	The meeting is adjourned.
17	Thank you.
18	MS. GLICK: Thank you.
19	(Time noted: 12:48 p.m.)
20	
21	
22	
23	
24	
25	

1	
2	CERTIFICATE
3	
4	SE OF NEW YORK)) ss.:
5	CTY OF KINGS)
6	
7	
8	I, Therese Sturges, a Notary Public
9	within and for the State of New York, do
LO	hereby certify:
L1	I reported the proceedings in
L2	the within-entitled matter and that the
L3	within transcript is a true record of
L4	such proceedings.
L5	I further certify that I am not
L6	related to any of the parties to this
L7	action by blood or marriage; and that I
L8	am in no way interested in the outcome
L9	of this matter.
20	IN WITNESS WHEREOF, I have hereunto
21	set my hand this 24th of April, 2013.
22	
23	
24	THERESE STURGES

April 8, 2013

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2-07 2 14:15,16 accountant 1 39:12 achieves 1 47:19 action 2 12:22 2-11 1 18:10 action 2 11:21 24:2 achieves 1 47:20 appealing 1 19:16 appears 1 22:12 applicants 1 13:14 application 2 28:4 47:16 applications 1 147:14 applications 1			•		
2-09 [1] 45:12 2-11 [1] 8:10 3	2011 [1] 35: 24	according [1] 15:8	•		
2-11 [1] 8:10 3	2-07 [2] 14: 15,16	accountant [1] 39:12	• •		
actual [2] 24:18 47:20 actually [9] 4:4 27:13 33:24 36:20 37:2,23 38:4 39:18 42:4 ad [1] 33:12 add [2] 9:10 13:3 addition [1] 31:17 adjourned [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 3-08 [1] 9:3 3-08(c)(1 [1] 12:18 3-08(c)(1)(ii [2] 9:14,23 3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4 And Materials	2-09 [1] 45 :12	achieves [1] 47:9			
actually 9 4:4 27:13 33:24 36:20 applicants 1 31:14 application 2 28:4 47:16 applications 1 47:14 applica	2-11 [1] 8: 10	action [2] 11:21 24:2			
actually [9] 4:4 27:13 33:24 36:20 37:2,23 38:4 39:18 42:4 ad [1] 33:12 add [2] 9:10 13:3 addition [1] 31:17 adjourned [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adopt [9] 4:4 27:13 33:24 36:20 application [2] 28:4 47:16 applications [1] 47:14 ap	3				
3,000 [1] 12:23 3-01 [1] 8:10 3-02 [1] 8:10 3-03 [1] 8:10 3-05 [2] 44:15,17 3-08 [1] 9:3 3-08(c)(1 [1] 12:18 3-08(c)(1)(ii [2] 9:14,23 3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 3-01 [1] 8:10 3 addition [1] 31:17 adjourned [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adoption [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adoption [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adoption [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adoption [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adoption [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adoption [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adoption [1] 47:14 applies [2] 10:11 17:19 apply [3] 31:9 32:6,7 approve [1] 33:22 approved [1] 33:14 april [1] 35:25 arise [1] 27:23 around [2] 4:12,14 arrival [1] 32:14 aspect [1] 27:17 asset [7] 3:8 5:19 30:19 34:12,24 41:5,18 asset-to-asset [1] 41:14 associates [2] 33:19,20 assume [1] 49:8 assurance [1] 15:6 austin [57] 4:2,15 6:21 7:3,13 8:4, 12,15,18,21,23 12:25 13:8,12,16 14: 11,14 20:20,25 21:12 28:12 29:3,7,		actually [9] 4:4 27:13 33:24 36:20			
3-01 [1] 8:10 3-02 [1] 8:10 3-03 [1] 8:10 3-05 [2] 44:15,17 3-08 [1] 9:3 3-08(c)(1 [1] 12:18 3-08(c)(1 [1] 12:18 3-08(c)(1)(ii [2] 9:14,23 3-08(c)(1)(ii [2] 9:14,23 3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 404 [1] 3:13 3 addition [1] 31:17 adjourned [1] 49:16 adoption [1] 49:16 adopted [2] 11:20 29:10 adoption [2] 6:23 7:5 ads [1] 33:22 adoption [2] 6:23 7:5 ads [1] 33:22 advantage [2] 15:11 24:17 advantageous [1] 24:7 advantageous [1] 24:7 advantageous [1] 24:7 adverse [3] 18:2 19:17 20:8 adversely [1] 15:9 affairs [1] 6:14 affect [2] 15:10 17:16 affirmative [1] 22:9 afraid [1] 44:10 agencies [2] 4:19 28:5 agency [3] 15:6 18:6,8		37 :2,23 38 :4 39 :18 42 :4	l • •		
3-02 [1] 8:10 3-03 [1] 8:10 3-05 [2] 44:15,17 3-08 [1] 9:3 3-08(c)(1 [1] 12:18 3-08(c)(1)(ii [2] 9:14,23 3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 3-08 [1] 31:17 adjourned [1] 49:16 adopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adopted [2] 11:20 29:10 adoption [2] 6:23 7:5 ads [1] 33:22 advantage [2] 15:11 24:17 advantageous [1] 24:7 advantageous [1] 24:7 adverse [3] 18:2 19:17 20:8 adversely [1] 15:9 affairs [1] 6:14 affect [2] 15:10 17:16 affirmative [1] 22:9 afraid [1] 44:10 agencies [2] 4:19 28:5 addition [1] 31:17 adjourned [1] 49:16 approve [1] 33:22 approved [1] 35:14 april [1] 35:25 arise [1] 27:23 around [2] 4:12,14 arrival [1] 32:14 aspect [1] 27:17 asset [7] 3:8 5:19 30:19 34:12,24 41:5,18 asset-to-asset [1] 41:14 associates [2] 33:19,20 assume [1] 49:8 assurance [1] 15:6 austin [57] 4:2,15 6:21 7:3,13 8:4, 12,15,18,21,23 12:25 13:8,12,16 14: 11,14 20:20,25 21:12 28:12 29:3,7,	1 *	ad [1] 33:12			
3-03 [1] 8:10 3-05 [2] 44:15,17 3-08 [1] 9:3 3-08(c)(1 [1] 12:18 3-08(c)(1)(ii [2] 9:14,23 3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4 adjourned [1] 49:16 adopt [1] 49:10 approve [1] 33:22 arise [1] 27:23 around [2] 4:12,14 april [1] 35:25 arise [1] 27:23 around [2] 4:12,14 aspect [1] 27:17 asset [7] 3:8 5:19 30:19 34:12,24 41:5,18 asset-to-asset [1] 41:14 associates [2] 33:19,20 assume [1] 49:8 assume [1] 49:16 austin [57] 4:2,15 6:21 7:3,13 8:4, 12,15,18,21,23 12:25 13:8,12,16 14: 11,14 20:20,25 21:12 28:12 29:3,7,		add [2] 9:10 13:3			
3-05 [2] 44:15,17 3-08 [1] 9:3 3-08(c)(1 [1] 12:18 3-08(c)(1)(ii [2] 9:14,23 3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4 4aopt [8] 8:5,9 13:5,12,17,24,24 14: 5 adopted [2] 11:20 29:10 adoption [2] 6:23 7:5 ads [1] 33:22 advantage [2] 15:11 24:17 advantageous [1] 24:7 advantageous [1] 24:7 advantageous [1] 24:7 advantageous [1] 15:9 affairs [1] 6:14 affect [2] 15:10 17:16 affirmative [1] 22:9 afraid [1] 44:10 agencies [2] 4:19 28:5 agency [3] 15:6 18:6,8		addition [1] 31:17	•• •		
3-08 (c) (1 [1] 12:18 3-08 (c) (1) (ii [2] 9:14,23 3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4 adopted [2] 11:20 29:10 adoption [2] 6:23 7:5 ads [1] 33:22 advantage [2] 15:11 24:17 advantageous [1] 24:7 advantageous [1] 24:7 advantageous [1] 24:7 adverse [3] 18:2 19:17 20:8 adversely [1] 15:9 adopted [2] 11:20 29:10 adoption [2] 6:23 7:5 ads [1] 33:22 advantage [2] 15:11 24:17 advantageous [1] 24:7 adverse [3] 18:2 19:17 20:8 adversely [1] 15:9 advantageous [1] 27:23 around [2] 4:12,14 aspect [1] 27:17 asset [7] 3:8 5:19 30:19 34:12,24 41:5,18 asset-to-asset [1] 41:14 associates [2] 33:19,20 assume [1] 49:8 assurance [1] 15:6 austin [57] 4:2,15 6:21 7:3,13 8:4, 12,15,18,21,23 12:25 13:8,12,16 14: 11,14 20:20,25 21:12 28:12 29:3,7,		adjourned [1] 49:16			
3-08(c)(1 [1] 12:18 3-08(c)(1)(ii [2] 9:14,23 3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4 adopted [2] 11:20 29:10 adoption [2] 6:23 7:5 ads [1] 33:22 advantage [2] 15:11 24:17 advantageous [1] 24:7 advantageous [1] 24:7 advantageous [1] 15:9 adverse [3] 18:2 19:17 20:8 adverse [3] 18:2 19:17 20:8 adoption [2] 6:23 7:5 ads [1] 33:22 advantage [2] 15:11 24:17 advantageous [1] 24:7 adverse [3] 18:2 19:17 20:8 adverse [3] 18:2 19:17 20:8 adverse [1] 17:10 asset [7] 3:8 5:19 30:19 34:12,24 41:5,18 asset-to-asset [1] 41:14 associates [2] 33:19,20 assume [1] 49:8 assurance [1] 15:6 austin [57] 4:2,15 6:21 7:3,13 8:4, 12,15,18,21,23 12:25 13:8,12,16 14: 11,14 20:20,25 21:12 28:12 29:3,7,	· ·	adopt [8] 8:5,9 13:5,12,17,24,24 14:			
3-08(c)(1)(ii [2] 9:14,23 3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4 adoption [2] 6:23 7:5 ads [1] 33:22 advantage [2] 15:11 24:17 advantageous [1] 24:7 advantageous [1] 24:7 advantageous [1] 24:7 advantageous [1] 15:9 advantageous [1] 15:10 advantageous [1] 24:17 advantageous [1] 24:7 advantageous [1] 15:10 advantageous [1] 24:17 advantageous [1] 24:17 advantageous [1] 15:10 advantageous [1] 24:17 advantageous [1] 24:17 advantageous [1] 15:18 asset [7] 3:8 5:19 30:19 34:12,24 41:5,18 asset-to-asset [1] 41:14 associates [2] 33:19,20 assume [1] 49:8 assurance [1] 15:6 austin [57] 4:2,15 6:21 7:3,13 8:4, 12,15,18,21,23 12:25 13:8,12,16 14: 11,14 20:20,25 21:12 28:12 29:3,7,		5	l =		
3-15 [4] 43:8,17,25 49:8 3-16 [1] 49:9 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4 24 [4] 24:4 4 33:27 ads [1] 33:22 advantage [2] 15:11 24:17 advantageous [1] 24:7 advantageou		adopted [2] 11:20 29:10			
3-16 [1] 49:9 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 advantage [2] 15:11 24:17 advantageous [1] 24:7 advantageous [1]		adoption [2] 6:23 7:5	<i>'</i>		
4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 advantage us [1] 24:7 advantageous [1] 24:7 adverse [3] 18:2 19:17 20:8 asset [7] 3:8 5:19 30:19 34:12,24 41:5,18 asset-to-asset [1] 41:14 associates [2] 33:19,20 assume [1] 49:8 assurance [1] 15:6 austin [57] 4:2,15 6:21 7:3,13 8:4, 12,15,18,21,23 12:25 13:8,12,16 14: 11,14 20:20,25 21:12 28:12 29:3,7,		ads [1] 33:22			
4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 41:5,18 adverse [3] 18:2 19:17 20:8 adversely [1] 15:9 affairs [1] 6:14 affect [2] 15:10 17:16 affirmative [1] 22:9 afraid [1] 44:10 agencies [2] 4:19 28:5 agency [3] 15:6 18:6,8	3-16 [1] 49 :9	advantage [2] 15:11 24:17			
4/8/13 [46] 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4.04 [4] 2:44 4.15 1 46:1 47:1 48:1 49:1 4.04 [4] 2:44 4.16 1 47:1 48:1 49:1 4.04 [4] 2:44 4.17 1 48:1 49:1 4.04 [4] 2:44 4.18 1 49:1 4.04 [4] 2:44 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 4.19 2:20 5.10 1 2:20 5.10 1 2:20 6.10 1 3:10 6.10 1 3:10 6.11 1 3:1 14:1 14 6.11 41:14 6.12 13:17 20:0 6.13 13:17 20:0 6.13 13:17 20:0 6.14 13:18 13:19 6.15 13:17 20:0 6.16 13:18 13:19 6.17 13:19 6.18 13:19 6.19 13:19	4	advantageous [1] 24:7			
10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 404 [4] 2:44 47:1 48:1 49:1 48	1/9/13 [46] 4.1 5.1 6.1 7.1 9.1 0.1	adverse [3] 18:2 19:17 20:8	•		
17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4	l .	adversely [1] 15:9			
24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4 04 [4] 24:4 4 11 20:20,25 21:12 28:12 29:3,7,	l .	affairs [1] 6:14	· ·		
31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 4. 04 [4] 2:44 5. 04 [4] 2:44 5. 04 [4] 2:44 5. 04 [4] 2:44 5. 04 [4] 2:44 5. 04 [4] 2:44 5. 04 [4] 2:44 5. 04 [4] 2:44 5. 04 [4] 2:44 5. 04 [4] 2:44		affect [2] 15:10 17:16			
38:1 39:1 40:1 41:1 42:1 43:1 44:1 agencies [2] 4:19 28:5 agency [3] 15:6 18:6,8 agency [3] 15:6 18:6,8 agency [3] 15:6 18:6,8 agency [3] 15:6 18:6,8		affirmative [1] 22:9			
45:1 46:1 47:1 48:1 49:1 agencies [2] 4:19 28:5 agency [3] 15:6 18:6,8 11,14 20:20,25 21:12 28:12 29:3,7,		afraid [1] 44:10			
agency [3] 15:6 18:6,8		agencies [2] 4:19 28:5			
		agency [3] 15:6 18:6,8			
	4-01 1/10:11		9,12,14,17,19,21 30 :4,9 38 :15 42 :		

April 8, 2013

23 **43**:3 **44**:4,7,9,12,24 **45**:2,6,9,11, 19,22,25 **46**:3,6,8,13 **48**:17,21,23 **49**:2,4,11,14

available [1] 19:13 average [2] 32:14,16

award [4] 16:7 23:25 24:3 45:14

awarding [1] 21:2

ayes [7] 8:17 14:13 29:16 44:6 45:8

46:5 **48:**25

В

back [5] 35:5,13 38:5 43:4,5

ballot [1] 47:7 bank [1] 36:5 basically [1] 36:16 basis [1] 39:13 bboard [1] 39:5

begin [5] 4:13 6:22,22,25 12:21 beginning [4] 12:17 14:7 18:15,16

believe [3] 18:24 22:8 30:21

believes [1] 21:14 below [1] 10:20 beneficial [1] 23:19 benefit [1] 20:12

best [32] **6**:18,18 **7**:6,10,25 **8**:9 **13**:7, 20 **14**:2,10 **19**:18 **22**:11 **24**:6,23 **29**: 8,11 **30**:6,20 **31**:16 **32**:10 **34**:16 **35**: 2,3,19 **40**:4,11,12 **44**:3 **45**:3,15,24

48:20

better [2] 27:5 39:20

bid [9] **17**:8,9 **18**:13 **19**:23 **23**:6 **26**: 11.15.19 **27**:18

bidder [17] **15**:11 **17**:24 **18**:3,20 **20**: 12 **21**:6,9,11,17 **22**:16,18 **23**:3,3,9,

18 **24:**13 **26:**20

bidders [5] **15**:12 **21**:22 **24**:9 **27**:15,

24

bidding [1] **23**:15 **bids** [3] **14**:24,25 **17**:23

billion [9] **30**:13 **35**:11,12 **41**:16,17

42:8,10,12,16 **bit** [1] **38:**16

board [51] 4:1,16 5:1 6:1 7:1 8:1 9: 1 10:1 11:1 12:1 13:1 14:1 15:1 16:

1 17:1 18:1 19:1 20:1 21:1 22:1 23:

1 24:1 25:1 26:1 27:1 28:1 29:1 30:

1 **31**:1 **32**:1 **33**:1 **34**:1 **35**:1 **36**:1,13 **37**:1 **38**:1,22 **39**:1,7 **40**:1 **41**:1 **42**:1 **43**:1 **44**:1 **45**:1 **46**:1 **47**:1 **48**:1 **49**:1,

boards [13] **33**:16,18,22,23,23,24 **35**:5,8,9,10,14,20 **42**:6

bond [1] **36:**5 book [1] **7:**9

both [3] 10:11 43:18,23

brief [1] 30:11

briefing [2] 46:21 47:2

bring [3] 15:17 16:25 17:12

broad [1] 36:9 brokerage [1] 39:12 brought [2] 26:10 27:6

buck [1] 33:20

budzik [20] **6**:13,13 **7**:20 **9**:20 **12**:15 **14**:20 **16**:14 **21**:21 **23**:21 **25**:7,12,24 **26**:5 **28**:3,24 **29**:20 **40**:13 **43**:12,24

46:18

bunch [1] **37:**13

bureau [3] 3:8 34:12,24

burner [1] 38:5 business [1] 49:12

C

c)(1 [2] 9:21 11:23 caitlin [1] 5:22

call [4] **4:**3,7 **10:**4,17

callan [1] 33:18

called [1] 34:5 camilo [2] 6:4.4

candidates [1] 33:2

capa [9] 29:25 43:14,17 44:2 46:10

47:4 **48:**13 **49:**9,15

capital [1] 37:16 caporale [2] 5:22,23

caporale [2] 5:22,2 care [2] 11:25 25:2

caroline [2] 3:16 5:3

case [3] 23:24 25:24 26:6

cases [1] 17:3

center [1] 3:12 certainly [3] 25:4 27:23 33:5

chafee [2] **6**:10,10 **chair** [1] **30**:7

challenge [2] 23:6 28:2

change [9] **16:**25 **17:**14,17 **22:**12,

14,21 **23:**17,23 **26:**25

changed [3] **26**:15,16 **44**:20 **changes** [10] **7**:7,21 **9**:2 **11**:22 **14**:

18 **26**:23 **37**:15 **43**:19 **44**:2 **45**:16

charter [2] **11:**17,17

check [1] 23:7

chief [4] 3:14 5:19 6:3,9

chorus [7] 8:17 14:13 29:16 44:6

45:8 **46:**5 **48:**25

cite [1] 8:7

city [15] **3**:12 **5**:2,4,11,25 **6**:8,15 **17**:

2 **23**:19 **24**:7,17 **27**:6 **30**:13 **33**:13

42:16

clarification [1] 49:6

clear [5] 4:5 11:9 13:19 15:22 26:22

client [1] 48:3 clients [1] 39:14 closed [1] 31:19

collaborative [1] 40:14

colloquial [1] 12:10 collusion [1] 38:18

combined [1] 42:6

come [4] 16:15 33:25 34:10 41:10

coming [1] **40**:4

comments [2] 29:4 46:17

community [1] 48:4

company [1] **41:**2

compete [2] **39:**11,16 **competes** [1] **39:**12

competing [1] 39:24

competition [6] 15:10,13 17:16 30:

25 **33**:6 **47**:11

complain [1] **20**:17

complaining [1] 25:22

components [1] **30:**20

compromised [2] 21:15,16

comptroller [2] 5:18 6:14

comptroller's [12] **3:**8,18 **5:**11,14,

16,21 **6:**16 **22:**6 **28:**10,20 **32:**13 **46:**

21

concern [1] 47:19 concerned [1] 47:23

concerning [1] 27:20

concerns [3] 46:23 47:5 48:16

conform [2] **44**:21 **45**:13

April 8, 2013

days [13] 18:25 19:7,9,11,14,15,24 during [3] 35:22 38:2 47:7 **conformity** [2] **17:**2,12 duty [1] 21:22 conquer [1] 41:25 **20:**4,7,23 **21:**3 **22:**20 **47:**22 day-to-day [1] 39:13 **consensus** [3] **34:**17 **40:**5,12 Ε debt [2] 36:10 38:8 **consent** [1] **7**:18 each [12] 31:6 33:16 35:7,9 38:21 decision [4] 19:17,25 20:9 24:18 consequently [1] 36:14 **39**:4,11,16,24 **41**:23,24 **42**:5 consider [1] 31:18 deemed [1] 24:15 eafe [1] 36:7 **consistency** [2] **28:**3,5 defined [2] 10:21.23 e-a-f-e [1] 36:8 **definition** [1] **43**:20 consultant [4] 38:23.23 39:2.3 earlier [1] 22:3 definitions [1] 43:21 consultants [11] 31:5 33:14,17 34: early [1] 47:25 18 **38**:19,21 **39**:8,21 **40**:6 **41**:9 **42**: dell'olio [2] 5:10,11 ease [1] 12:7 denied [1] 47:16 21 eaten [1] 20:5 department [6] 3:5 5:2.5.7.9 42:11 contact [1] 31:23 economy [1] 42:3 context [1] 10:16 depending [1] 35:8 **effectively** [1] **40**:24 depends [1] 37:7 continue [1] 12:24 efficient [1] 12:12 continued [1] 3:2 **deprive** [1] **15**:6 either [1] 12:5 deputy [2] 5:18 6:14 contract [12] 15:7,20,24 16:2,3 21: emerging [2] 36:3 38:7 **describe** [1] **46**:12 3 **22**:5 **32**:21 **36**:21 **39**:15 **41**:24 **46**: emily [1] 6:2 described [1] 43:11 **employing** [1] **37:**17 contracting [1] 31:11 **determination** [9] **16**:6.9.13 **17**:14 engage [1] 31:23 contracts [3] 3:4,18 36:19 20:7,8,11 22:2,4 enhance [1] **32**:23 **determinations** [3] **28**:16,20,23 control [1] 38:17 enough [5] 17:8,15 18:3 34:22 37: copy [1] 14:22 determines [2] 15:4 24:2 determining [1] 17:7 cost [2] 33:5.7 entire [4] 31:3,10 32:8 35:17 counsel [9] 3:4,6,16 4:25 5:4,11,25 developed [2] 36:6,7 **equities** [1] 36:4 developing [1] 40:13 **6**:15 **11**:21 essentially [1] 17:6 counselor [1] 6:20 different [7] 35:23 40:3 41:8,21,24 eventually [1] 39:14 course [1] 32:2 **42:5 49:10** everybody [2] 7:14,23 diligence [1] 34:25 court [1] 30:3 **evestment** [1] **34**:5 diminish [1] 47:11 cover [1] 43:23 **example** [1] 11:5 create [1] 23:8 director [2] 3:12 6:11 experience [1] 38:3 created [1] 24:8 disadvantage [2] 24:8,11 explain [3] 10:3 13:10 33:9 critical [1] 30:19 disadvantaged [1] 21:6 extension [1] 36:23 disadvantageous [1] 21:16 current [7] 11:20 22:14 30:21 31:7. extra [1] 20:5 discover [1] 24:13 21 **32:**4 **36:**17 **extremely** [1] **32**:22 currently [6] 10:20 16:10 23:24 30: discuss [2] 46:24 47:5 17 31:19 33:17 discussed [2] 14:5 45:15 cushman [22] 5:8,9 10:6 11:25 12: discussion [2] 13:25 47:18 fact [5] 20:16 23:5 25:3 26:8 27:3 4,16 **15**:25 **16**:17,24 **17**:21 **18**:5,22 discussions [1] 48:11 fail [1] 15:2 **19**:15 **21**:8 **22**:7,25 **25**:18 **26**:2,7 **28**: documentation [1] 28:13 fair [1] **24**:22 17 **43:**15 **49:**5 dollar [2] 26:11.13 familiar [6] 7:14,20,24,25 14:21 46: dollars [3] 42:8.10.16 D 22 done [2] 35:15 37:25 far [1] 36:16 data [1] 34:7 down [1] 32:17 fast [1] 19:14 database [1] 34:5 draft [1] 34:13 favor [7] 8:16 14:12 29:15 44:5 45: databases [1] 34:4 dramatically [1] 32:11 7 46:4 48:24 date [1] 21:4 due [1] 34:25

April 8, 2013 federation [1] 4:18 ideally [1] 35:14 G feel [3] 21:5 24:21 36:12 ii [8] 9:21,24 10:22 11:6,10,24 12:7, game [1] 25:6 few [4] 38:5 39:25 46:23 47:5 **geneith** [1] **5**:13 fiduciaries [7] 33:16 34:15 35:18 **implement** [1] **34**:6 general [1] 47:8 **important** [3] **11:**15 **32:**18,23 **39:**8,9,10,23 gets [2] 20:9 42:12 **fiduciary** [1] **31:**5 improved [1] 30:24 getting [2] 19:19 40:19 fifteen [1] 41:11 inclined [1] 27:11 qive [1] 46:20 include [1] 7:9 fifth [1] 30:14 given [1] 38:16 **figure** [3] **26**:14,21 **48**:2 income [2] **35**:17 **36**:10 giving [1] 34:15 file [3] 16:2,3 19:13 incorporate [1] 27:8 glick [27] 6:8,8 7:2,4,19,23 8:3,7,22, filed [1] **15**:19 increase [2] 32:3 33:3 25 **9**:10 **14**:16,22 **15**:23 **19**:9 **23**:13 files [1] 31:7 increased [2] 30:24 33:6 **28**:22 **29**:2 **30**:2 **43**:7 **44**:10,14 **45**: filled [1] **37**:20 independent [7] 31:4 34:15 38:22 13 **46:**9.16 **48:**14 **49:**18 final [1] **35**:25 **39:**4 **40:**17,18 **42:**20 gml [1] 17:5 find [9] 12:11 17:25 18:3,6 22:18,19 independents [1] 42:18 got [3] 26:25 36:17 47:2 individual [1] **21**:13 **25**:19 **27**:15,19 gotten [1] 21:18 finding [2] 12:8 22:9 informality [3] 23:10,14 24:4 granted [1] 28:6 finds [1] 19:3 initial [2] 21:19 23:17 quess [4] 7:2 16:7 21:4 43:8 initialed [2] 26:23.24 fine [2] 14:3 37:10 quidelines [2] 33:15 34:2 insignificant [1] 17:15 finish [1] 47:14 gumbs [3] 3:4 4:24,24 instance [1] 41:15 fire [5] **35**:12 **37**:13 **39**:2 **41**:22 **42**: guys [2] 11:13 41:22 instead [2] 19:24 35:16 11 firefighters' [1] 39:3 Н institutional [1] 33:12 first [9] 7:6 9:24 12:19 13:22 21:20 interpreting [1] 17:4 hand [1] 42:2 investment [4] 3:14 5:20 31:20 49: **30**:3.8 **35**:23 **38**:20 handle [1] **34**:23 five [21] 30:12 31:4 32:7,17 33:17, happen [2] 18:11,15 22 34:13,14,18,20,21 35:18 37:4 40: investor [1] 33:13 happened [1] 24:14 issue [1] 25:17 2,6,6,19 41:8,20,22 42:5 happens [1] 37:12 fixed [1] 36:10 issued [1] 20:24 happy [1] 48:12 flores [2] 6:6,6 item [3] 26:17 30:8,8 head [1] 4:17 forgot [1] 23:18 items [2] 26:12,12 hearing [1] 49:15 formalities [1] 4:6 help [2] 23:14 48:12 forth [1] 15:2 **hhs** [4] **6**:11 **46**:10,20 **48**:18 jennifer [1] 4:15 forward [1] 16:6 high-end [2] 41:6,8 jobs [1] 4:17 found [9] 16:8 20:16 21:9 22:16 23: highest [1] 32:2 jones [57] 4:2,15 6:21 7:3,13 8:4,12, 4,11,22 **24:**19 **25:**21 high-yield [4] 36:4 41:15,16,17 15,18,21,23 **12:**25 **13:**8,12,16 **14:**11, four [7] **30:**23 **32:**7,12 **33:**7,23 **34:** hire [2] 33:18 39:22 14 **20**:20,25 **21**:12 **28**:12 **29**:3,7,9, 20 43:21 hired [2] 38:21 39:8 12,14,17,19,21 **30:**4,9 **38:**15 **42:**23 fraud [1] 38:18 hiring [2] **32**:19 **36**:13 **43**:3 **44**:4,7,9,12,24 **45**:2,6,9,11,19, friedman [20] 5:6,7 9:12,23 11:14 howard [1] 5:6 22,25 **46:**3,6,8,13 **48:**17,21,23 **49:**2, **12**:3 **13**:4,23 **14**:4 **19**:6 **20**:10,23 **21**: hundred [5] 30:15 31:13 37:3 42: 4,11,14 11,25 **22:**10,23 **23:**2 **28:**8,15,19 14 **48:**5 front [1] 30:8 K fund [2] 41:25 42:13 keep [2] 11:15 39:17 funds [4] 30:13 33:4 35:11 42:17 idea [1] 10:14 **kept** [1] **15:**23

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future [2] 31:21,24

April 8, 2013

kind [2] 7:17 21:22 knowledge [2] 34:8,9 known [3] 21:20 24:24.25

label [2] 10:11 11:6 language [2] 7:10 13:19 large [4] 26:19,20 31:15 34:22 large-cap [1] 36:6 largest [1] 30:14

larry [2] 5:17 43:11

last [4] 7:22 26:3 33:5 46:9

late [1] 24:20 later [1] 42:15

13 **25:**24 **27:**7

law [12] 4:22,22 5:2,5,7,9 17:3,3,11,

learn [1] 21:2 leave [1] 37:10 left [1] 42:7 legal [1] 6:14 legislative [1] 3:6

less [4] 9:16,17 10:23 12:23

leverage [1] 42:19 limits [1] 10:5 line [2] 9:25 27:7 lisa [1] **6**:6

lisette [3] 6:4 46:25 47:6 list [4] 34:11,25 41:10,10 litigation [2] **25**:17,20

little [3] 12:12 38:16 44:11

loans [1] 36:5 lona [1] 36:18

look [4] 23:12 27:13 34:16 43:5

looking [4] 24:5 25:14 31:12 32:8

looser [1] 20:15 losina [1] 22:17 lot [2] 38:12 41:25 louisa [1] 6:10 low [4] 23:3,9,18 26:19

lowers [1] 33:6

lowest [1] 24:13

M

made [7] 7:8,21 14:18 16:4 19:25 **20:**2,9

management [8] 3:14,15 5:19 31:

11 **34**:13,24 **37**:14 **38**:8

manager [7] 30:18 32:10 39:13 40:

8.9 43:18 49:8

managers [34] 30:15 31:3,9,16,18 **32:**3,5,7,19,22 **34:**3,3,6,8,10 **35:**7 **36:**2,6,7,13,19 **37:**4,10,13,16,22 **39:**

21 41:5,7,8,11,13,18 42:22

managing [1] **36**:20

mandate [4] 31:20 35:9 38:7 41:19

manigault [3] 3:6 5:24,25

many [2] 33:2 36:25 mark [1] 23:16

market [2] 36:3 38:7 markets [2] 32:20,22

marks [1] 9:19

matter [2] 20:3 38:25

mayor [1] 6:20

mayor's [2] 3:10 46:18

mctique [2] 5:15,15

mean [4] 25:7,12 37:4 47:8

means [1] 40:22

meant [2] 17:11 26:5

meeting [3] 4:4,7 49:16

member [3] 4:21 6:16,19

members [2] 39:5.7 method [1] 30:25

methods [2] 17:25 18:4

michael [1] 6:18

micropurchase [7] 8:24 9:4,8 10:

7 14:6 44:16,21

micropurchases [10] 9:19 10:4,

12,17,18,24 11:7,10,18 12:19

might [12] 21:5 23:6,7,11 24:20 31: 20 37:22 39:20 41:20,21,22 42:13

million [2] 26:11 42:14 minimum [1] 32:20

minor [4] 23:10,13 24:4 25:8

missing [1] **31:**15

mocs [7] 5:23 6:3,5,7,9 46:25 47:6

moment [1] 25:19 money [2] 34:6 41:12 monthly [1] 34:7

months [2] 32:15,17

most [1] 30:19

motion [14] 8:5 13:3,5,9,11,21 14:4

29:7 **43**:13,22,25 **45**:2,23 **48**:19

move [10] 8:9,24 14:9,15 29:8,24

30:7 45:3.24 48:20 moved [5] 8:21 44:9 45:11 46:8 49:

moving [1] 16:6

ms [110] **4:**2,24 **5:**3,13,22,24 **6:**2,4,6, 8,10,13,21 **7:**2,3,4,13,19,20,23 **8:**3, 4,7,12,15,18,21,22,23,25 **9:**10,20 **12**:15,25 **13**:8,12,16 **14**:11,14,16,20, 22 15:23 16:14 19:9 20:20,25 21:12, 21 **23**:13,21 **25**:7,12,24 **26**:5 **28**:3, 12,22,24 **29:**2,3,7,9,12,14,17,19,20, 21 **30**:2,4,9 **38**:15 **40**:13 **42**:23 **43**:3, 7,12,24 **44:**4,7,9,10,12,14,24 **45:**2,6, 9,11,13,19,22,25 **46:**3,6,8,9,13,16, 18 **48**:14,17,21,23 **49**:2,4,11,14,18

much [3] 18:19 19:2 41:12 multiple [3] 26:12 41:13,18

must [1] 16:12

Ν

need [12] 13:2,5 28:14 32:19 37:7, 19,20 **38:**2 **41:**13,17 **45:**17 **46:**12

needs [3] 10:9 20:6 34:23

negotiate [1] 42:15

negotiation [1] 40:25

nepc [1] 33:19

new [18] **3**:6,12,16 **4**:22,25 **5**:4 **6**:15 **30**:12,23 **31**:17,20 **32**:15 **33**:8,9,11

38:7 **44**:16 **49**:8

newman [2] 6:2.2

next [3] 8:24.25 44:14

nine [1] **37**:22

nomenclature [1] 10:14

non-conformity [1] 24:15

non-important [1] 24:16

non-performance [1] 15:5 non-responsive [15] 14:17 16:8,

12,21 **18:**7,24 **20:**14 **21:**7,9,18,24

23:22 25:20,22 28:23

normal [1] 19:16

noted [1] 49:19

notes [1] **18**:9 nothing [1] 23:5

notice [7] **16**:18,20 **18**:23 **22**:8 **23**:

24 35:24 49:15

April 8, 2013

notification [1] 27:9 parenthetical [1] 9:18 power [1] 42:7 ppb [9] 4:3,5,21 6:17,19 7:6 8:10 10: **notify** [1] **21:**22 part [6] 16:2 19:22 22:2 28:10,21 number [7] 27:2 31:15 33:24 34:22 16 **14**:15 **37:**25 **43:**9 **49:**10 particular [5] 20:11.12 37:24 41:5 practice [3] 13:23 22:14 28:11 nycers [1] 41:21 **43:**6 precise [1] 18:14 particularly [1] 47:25 pre-existing [1] **47**:22 0 party [4] 21:5,18,19,20 prefer [1] 12:6 **objective** [1] **31:**25 pattern [2] 26:8 27:3 prepared [2] 29:5 47:3 **objectives** [1] **30:**23 prequalification [1] 47:13 peak [1] 42:18 obviously [2] 42:13 48:9 pen [3] 23:17 26:16,23 prequalified [1] 48:6 **office** [14] **3**:8,18 **5**:12,14,16,21 **6**: pencil [2] 26:16,24 presented [1] 29:4 16 **9:**13 **22:**6 **28:**10,21 **46:**19,20,21 presumably [1] **25**:2 pension [7] 30:13 31:6 35:10 41: officer [3] 3:14 5:20 6:9 24 42:13,16 43:19 price [1] 42:9 officers [1] 39:2 people [6] 4:11 12:9,9 22:15 25:20 prior [2] 16:6 32:13 okay [13] 7:3 8:3,22 11:13 12:25 14: **31:**13 probably [6] 12:20 31:12 34:19 38: 2,14,16,23 27:22 44:13 45:22 48:14 perform [1] 15:2 6 40:8,9 once [1] 18:22 performance [7] 30:21 32:3,4,24 problems [1] **27:**23 one [12] 4:17 7:6,12 26:12 30:24 35: **33:4 37:14 39:19** process [32] 21:15 23:15 30:17,22, 25 **39:**25 **40:**10 **41:**14,23 **43:**6 **49:**5 performed [1] 15:7 23 **31:**2,8,17,22 **32:**12,16 **33:**8,9,11, ones [1] 21:10 perhaps [1] 30:7 21 35:21 36:15,17 37:18,23 38:9,12, only [11] 11:4,19 19:11 24:14 31:8 period [10] 11:7 12:20 18:14 32:25 13 **40:**2,15 **41:**4 **42:**22 **43:**11 **47:**7, **32**:5 **38**:24 **39**:22 **42**:14 **43**:17 **47**:22 **35**:22 **38**:14 **47**:12,15,24 **48**:7 10,25 48:12 open [2] 17:24 31:20 permanent [2] 16:3.5 processes [1] 32:4 opening [1] **32:**25 person [4] 19:3 20:17,22 34:20 procurement [55] 4:1,16 5:1 6:1,9 operating [1] 39:10 pick [6] 31:8 32:5 35:19 40:5,9 42: 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14: **opportunity** [1] **27:**25 1 15:1 16:1 17:1 18:1 19:1 20:1 21: opposed [7] 8:19 29:17 31:7 44:7 picked [1] 42:5 1 22:1 23:1 24:1 25:1 26:1 27:1 28: **45**:9 **46**:6 **49**:2 picking [1] 40:20 1 29:1 30:1 31:1 32:1,14,16,25 33:1, opposers [1] 21:23 picks [4] 34:14,16 40:4,18 15.25 **34**:1.23 **35**:1 **36**:1 **37**:1 **38**:1 order [2] 20:6 44:11 piece [1] 22:24 **39**:1 **40**:1 **41**:1 **42**:1 **43**:1,10 **44**:1 organization [1] 21:13 place [2] 11:2,4 45:1 46:1 47:1 48:1 49:1 organizations [1] 40:3 placing [1] 15:10 procurements [5] 9:15 10:22 11: other [17] 4:17 10:13 11:21 15:12, planning [1] 41:6 8 12:22 44:18 21 21:10,22 39:4,11,14,16,21,24 42: plus [1] **36**:22 production [1] 31:3 2.23 47:19 49:12 point [5] 16:16,19,19 19:25 22:19 products [1] 36:11 otherwise [3] 11:23 15:12 48:13 policy [47] 4:1,16 5:1 6:1 7:1 8:1 9: professional [1] 40:3 out [15] 9:14 11:5 17:9 18:3 22:18, 1 10:1 11:1 12:1 13:1 14:1 15:1 16: professor [1] 4:22 19 **23**:7 **24**:19 **26**:21 **27**:19 **34**:20,21 1 17:1 18:1 19:1 20:1 21:1 22:1 23: projects/chief [1] 3:10 **35**:24,25 **44**:11 prompted [1] 26:6 1 24:1 25:1 26:1 27:1 28:1 29:1 30: outside [1] 10:15 1 31:1 32:1 33:1 34:1 35:1 36:1 37: promptly [1] 18:12 over [4] 15:11 25:17 45:17,17 proposal [3] 43:16 45:4 47:20 1 38:1 39:1 40:1 41:1 42:1 43:1 44: overall [2] 11:15 32:23 1 45:1 46:1 47:1 48:1 49:1 proposals [3] 14:25,25 18:12 P proposed [2] 13:21 43:17 position [2] 15:11 27:16 possible [4] **33**:3 **35**:4 **37**:21 **38**:13 proposer [1] **20:**13 **p.m** [1] **49**:19 potential [1] **32**:9 prospective [1] 27:24 paper [1] 22:24 potentially [1] 31:23 protest [2] 18:21 19:7

April 8, 2013

protestant [1] 4:18 prove [1] 48:9 provide [2] 18:9 28:13 providing [1] 17:18 **provisions** [1] **15**:21 **public** [1] **30**:16 publications [1] 33:12 publish [1] 34:3 purchase [3] 9:2 10:5 44:20

purchases [6] 10:8.10.11 11:16.19. reminder [1] 25:13

purpose [1] 47:9

put [6] 9:18 11:2,4 12:2 33:11,21

putting [1] 9:17

qualitative [1] 34:8 quantitative [1] 34:9 question [3] 20:13 25:6 38:10 **auestions** [8] **7**:17 **9**:6 **15**:15 **42**: 24 44:24 45:20 46:14,17 quickly [4] 4:10 33:9 35:3 37:20

quite [1] 26:22 quotation [1] 9:19

R

raised [1] 9:4 range [1] 42:9 ranged [1] 36:3

rather [3] 10:5 11:3 26:16

react [1] 32:20 reacting [1] 35:16 read [2] 14:19 19:20

real [2] 3:4 24:8 really [1] 38:25

reason [2] 18:4 32:18

reasons [2] 33:7 47:12

receive [2] 18:23 49:15 recent [4] 25:25 26:6,8,9

recommend [6] 34:19 35:20 36:14

39:20 **40:**7,19

recommendation [1] 45:14 recommendations [3] 34:11 35:

6 **39**:18

recommended [1] 41:2 record [3] 15:20,24 33:13 refer [1] 11:18

referred [1] 25:25

refers [2] 11:17.19

registration [1] 28:11

reject [1] 19:23

rejected [1] 15:3

rejection [1] 14:24

related [1] 43:25

remember [1] 18:19

repeat [1] 25:11

report [2] 10:17 39:5

reporting [1] 10:15

require [2] 27:12 33:24

requirement [4] 15:18 25:5 27:9

42:4

requirements [1] 15:9

requires [1] 47:17

respect [1] 27:14

respective [1] 31:6

response [12] 8:20 29:6,18 42:25

44:8,25 **45**:10,21 **46**:7,15 **49**:3,13

responses [1] 17:4

responsive [4] 20:16 22:16 23:4,

11

responsiveness [2] 19:22 22:9

rest [1] 12:22 retain [1] 10:9

review [1] 47:15

reviewing [2] 46:23 47:13

rfp [7] 22:5 28:21 30:17,22 36:17 47:

20 48:8

rfps [4] 17:20 35:23 36:25 38:2

rights [1] 27:20

robina [2] 3:4 4:24

rocaton [1] 33:19

romanette [7] 9:21,24 10:21 11:6,

24 12:17,18

room [1] 4:12

ross [1] 4:20

rule [28] 7:6 9:3,6,9 10:8 13:3,6,15,

17,17,21,25 **14**:15 **19**:7,12 **23**:22 **40**: 23 43:10 44:14,15,16,21 45:14 46:9,

11.22 47:3.9

rules [22] 4:6 6:23 7:5.8 8:6.8.10 10: 16 **12**:8,11 **13**:13 **14**:5 **16**:11 **17**:2,

10 18:13 25:8 26:22 27:21 29:24 43: 5 **48:**19

same [2] **19**:6 **41**:19

sample [1] **38**:19

sandler [34] 4:20,21 8:14 9:7,22 10:

2 **11:**12 **12:**6 **13:**2,10,14 **14:**8 **15:**16 16:22 17:19,23 18:17 19:2,10 20:19,

21 **24**:10 **25**:4.10.16 **26**:4 **27**:11 **29**:

13 **36**:18,24 **40**:22 **45**:5 **46**:2 **48**:22

saving [1] 13:17

says [2] 11:6 44:17

scale [1] 42:3

schloss [9] 5:17,18 30:11 36:21 37:

6 **38**:20 **40**:16 **41**:3 **43**:2

school [1] 4:23

search [4] 35:24 37:8.9 43:18

searches [1] 36:3

second [17] 4:4 8:13.14 13:7 14:10

20:19 23:3 24:13 29:12.13 31:25 44:

3 **45**:5,25 **46**:2 **48**:21,22

section [1] 43:20

securities [1] **30**:16

see [3] 17:25 27:23 28:25

seek [1] 32:2

seems [1] 24:6

select [1] 34:2

selected [2] 35:7 36:2

selection [2] 30:18 42:22

senior [4] 3:4.16 4:25 5:4

service [1] 48:4

services [1] **46**:19

session [2] 4:3,8

set [3] **15:**2 **33:**8 **48:**15

sets [2] 39:23 41:9

seven [4] **41:**18,21,22,23

seventeen [1] 32:15

several [1] 31:12

shall [1] **15:**3

shannon [2] **3**:6 **5**:24

short [4] **34**:11,25 **40**:14 **47**:24

shortening [1] **32**:24

shortens [1] **32**:12

shouldn't [2] **19**:11 **24**:24

shown [1] 18:7

April 8, 2013

side [1] 19:4 significant [1] 48:9 silk [3] 3:16 5:3.3 since [2] 44:19 49:6 sis [1] **33**:19 sitting [1] 38:5 **situation** [1] **23**:9 **six** [1] **35:**23 size [1] **35**:8 **small** [12] **9**:2 **10**:5,7,10,10 **11**:16, 19,22 **26:**13,18 **27:**2 **44:**20 small-cap [3] 36:4,7 37:8

smallest [1] 42:11 **sole** [3] **40**:24 **44**:17,22 solve [1] 10:24

somebody [3] 26:10 34:19 40:20

somehow [1] 24:21

sometimes [3] **32**:6,19 **37**:12

somewhat [1] 25:13

soon [1] 38:13

SORTY [3] **15**:16 **18**:18 **25**:10 sort [4] 19:18 25:17 26:10 37:6

source [3] **40:**25 **44:**17.22

special [1] 3:10 specifically [1] 47:8 **specified** [1] **15**:8 **specify** [1] **18:**13 spent [1] 40:20 staff [2] 3:10 6:3

standard [3] 17:6 24:25 27:6 standards [2] 15:2 20:15

start [10] **11:**5 **12:**2,7 **27:**4 **37:**17,23

38:9.11 **41**:7 **44**:23

starts [3] 9:14 41:4 44:18

state [7] **17:**3,3,11,13 **23:**25 **24:**2 **27:**

states [3] 30:15 36:5.6

stats [1] 48:8

stein [22] **5**:8,9 **10**:6 **11**:25 **12**:4,16

15:25 **16**:17,24 **17**:21 **18**:5,22 **19**:15 **21**:8 **22**:7.25 **25**:18 **26**:2.7 **28**:17 **43**:

15 **49:**5

steve [1] 22:2 steven [1] 5:8 still [3] 8:4 10:9 26:4

story [1] 26:11

stray [1] 23:16

streamlining [1] 47:10

stricter [1] **17**:10

structure [1] 10:9

submission [1] **18**:12

sub-optimal [1] **30**:22

subset [1] 10:7

successful [1] **30**:20

suddenly [1] **27:**15

suggest [3] 9:16 12:14 30:6

sum [1] 26:20

support [3] 29:20,22 47:4

system [4] **24**:22 **30**:14 **42**:19,20

table [1] 4:13

talked [1] 9:12

teachers [4] 35:12 38:22.24 41:20

technical [1] 49:6

ten [16] 18:25 19:7,9,11,13,15,24 20:

4,7,23 **21**:3 **22**:20 **26**:3 **32**:7 **37**:5 **47**: 22

ten-day [1] 48:7

term [2] 10:25 12:9

terms [2] 17:17 22:14

test [1] 38:14

testing [1] 36:11

text [1] 12:22

thad [1] 5:15

themselves [3] 19:3 27:15 28:9

theory [1] 16:18

there's [12] 16:3.20 19:10 21:21 23:

16 **24**:7 **25**:6,8 **30**:22 **41**:13,25 **47**:

12

they'll [1] 41:6

thinking [2] 27:4 43:9

thirty [1] 31:14

though [1] 19:14

thousand [1] 48:3

three [9] 7:4 32:6,11 34:21 36:22,

22 37:9 48:3,5

throughout [2] 7:8 28:4

throw [1] 17:8

timeframe [3] 16:4,11 19:16

title [1] 11:15

tony [1] 5:10

took [1] 32:14

top [3] 25:5 32:6 39:19

totally [1] 40:17

towards [1] 21:17

track [1] 39:17

trade [2] 30:16 33:12

transparency [1] 25:14

trial [1] 35:22

truncate [1] 32:9

trustees [1] 40:7

try [1] 42:2

trying [1] 26:21

turnbull [2] 5:13,14

twelve [2] 36:2 41:11

twenty [1] 31:14

two [4] 32:6 36:22 39:23 41:23

type [1] 38:18

typical [3] 31:11 36:19,21

typically [5] 18:11,16 31:13 33:6

41:11

U

u.f.a [1] 37:8

unconform [1] 44:15

under [3] 17:5 32:15 33:17

underline [1] 12:21

undermining [1] 15:13

understand [1] 28:25

unhappy [1] 18:20

united [3] 30:14 36:5,5

universe [6] 31:3,10,15 32:8 35:18

36:10

unless [2] 15:3 23:25

until [4] 21:2 24:19 34:21 37:22

up [13] 7:19 15:17 16:15 20:5 30:8

31:21 **33:**2.25 **34:**10 **39:**15 **40:**4 **41:**

10 48:15

update [1] 7:9

V

valerie [1] 6:13

value [8] 7:6,10 9:15 10:22 11:8 12:

23 26:18 45:16

variation [1] 17:7

various [2] 7:8 28:4

varv [1] 35:11

Procurement Police Board April 8, 2013

vendor [1] 18:10 **york** [8] **3**:6,12,16 **4**:22,25 **5**:4 **6**:15 vendors [1] 48:3 **30**:12 vicinity [1] 39:6 viewed [1] 47:16 violation [1] **25**:9 vote [6] 6:23 7:5 29:5 43:25 46:10 **48**:18 voted [4] 29:25 43:13,16 49:7 W waiver [5] 16:23 19:4 21:19 27:17 28:14 waivers [3] 27:20 28:6,9 waiving [3] 15:5 21:23 24:3 walk [3] 4:9,12 6:24 walking [1] 7:16 wanted [1] 27:9 way [10] 4:14 10:4 12:5 21:16 22:12, 13,22 28:5 31:4 37:14 ways [1] 10:13 welfare [1] 4:18 whatever [1] 22:19 whenever [1] **20**:2 whether [3] 12:2 17:7 19:22 whole [2] 10:8 38:2 will [19] 4:14 7:2 8:23 15:7 23:14.19 **27**:13 **28**:9 **29**:20,21 **34**:2,14 **38**:6,6 **44**:15,22 **45**:5 **47**:21 **49**:14 window [1] 38:14 within [2] 11:23 47:15 word [5] 9:8,17,18 12:19 14:6 work [2] 27:14 35:3 worked [1] 33:14 working [1] 40:6 works [2] 12:5 38:24 writing [7] 15:4,18,19 18:8,9 28:17, written [3] 27:22 29:10,11 X **XY** [1] **40:**7 Y year [3] 36:25 37:5,5 years [6] 26:3 32:13 36:22,23 37:9, 22