

NEW YORK CITY ORGANIZATIONAL STRUCTURE

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CHAPTER 10

THERE ARE TWO TYPES OF CITY AGENCIES

New York City has two types of agencies. They are:

1. The Mayoral Agencies

Mayoral agencies operate under the jurisdiction of the Mayor's Office. Purchases made by Mayoral agencies and offices of the independently elected officials are subject to the New York City Procurement Policy Board (PPB) Rules. All these procurements are governed by the revised City Charter. Purchases made by Mayoral agencies, but not those of independently elected officials, may be subject to oversight by the Mayor's Office of Contracts.

2. The Independent (Non-Mayoral) Agencies

Purchases made by independent agencies and their departments are not directly regulated by the City of New York or the PPB. These agencies have boards of directors, or other governing bodies, which authorize and regulate what, how, and from whom, they purchase. They may draw on supplies purchased by DCAS. Their procurements are not affected by the City Charter or PPB Rules.

Some Examples of Mayoral and Independent Agencies

Mayoral Agencies

Department of Citywide Administrative Services
Housing Preservation and Development
Human Resources Administration
Department of Sanitation
Parks and Recreation
Police Department

Independent Agencies

Health and Hospitals Corporation
Housing Authority
Transit Authority
Board of Education
City University of N.Y.
Port Authority of N.Y./NJ

Primary Entities Involved in The New York City Procurement Process

The following entities are involved in the New York City procurement process:

1) **Mayor:**

The Mayor has express responsibility for procurement decisions. Much of this authority has been delegated to the City Chief Procurement Officer who also serves as Director of the Mayor's Office of Contracts.

2) **Comptroller:**

The Comptroller is an independently elected public official with the authority and responsibility under Chapter five of the New York City Charter to audit and investigate all matters relating to, or affecting the finances of the City including agency compliance with applicable rules and procedures for procuring goods.

services, construction and construction-related services, the performance of contracts, the receipt and expenditure of City funds and to make recommendations and comments in regard to the operations, fiscal policies and financial transactions of the City. Additionally, no contract can be effective unless registered by the Comptroller.

3) City Council:

The City Council has been granted authority by the New York City Charter to jointly set, with the Procurement Policy Board, the dollar thresholds requiring formal competitive procedures.

4) Procurement Policy Board:

The PPB is a permanent agency of the City of New York whose function is to establish comprehensive and consistent procurement policies and rules having broad application throughout the City. The PPB is precluded by the New York City Charter from exercising any authority over the administration of any contract or any disputes resulting therefrom.

5) Mayor's Office of Contracts:

This is the agency that is responsible for the oversight of City contracts. The Mayor's Office of Contracts, under the direction of the City Chief Procurement Officer, has been delegated mayoral authority to make or review particular procurement decisions granted to the Mayor under the New York City Charter.

6) Department of Investigation:

The Department of Investigation is authorized to make any study or investigation which, in the opinion of the Commissioner, may be in the best interests of the City, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency. The jurisdiction of the Commissioner extends to any agency, officer or employee of the City, or any person or entity doing business with the City, or any person or entity who is paid or receives money from or through any agency of the City.

7) Borough Presidents:

Borough Presidents have the authority to monitor and make recommendations regarding the performance of contracts providing for the delivery of services in the borough and, when the borough president deems it appropriate, requires that hearings be held in the borough by a contract performance panel.

8) Agency Heads:

Agency heads have the authority to organize and supervise the procurement function and make agency decisions concerning the award and administration of contracts.

9) Department of Citywide Administrative Services:

The Department of Citywide Administrative Services is the central City agency responsible for the procurement of goods and other personal property, the disposition of surplus property, the acquisition of real property other than housing, and the provision of automotive, communication, energy and data processing services.

10) Department of Design & Construction:

DDC has consolidated the building construction program of the Department of General Services, the road construction program of the Department of Transportation and the sewer and water main construction program of the Department of Environmental Protection. Other construction functions will be consolidated into DDC in the future.

11) Corporation Counsel:

The Corporation Counsel is attorney and counsel for the City and has charge of and conducts all the law business of the City and its agencies in which the City is interested. The Corporation Counsel also has sole authority and responsibility to approve as to form and legal sufficiency, individually or by standard type or class, all contracts and contract amendments.

12) Office of Administrative Trials and Hearings:

OATH has authority and responsibility to conduct adjudicatory hearings in connection with certain disputes arising out of the agency conduct of the procurement function.

13) Department of Business Services/Division of Economic and Financial Opportunity:

DEFO has been granted authority by the New York City Charter to establish, administer, coordinate and enforce a citywide program for the identification, recruitment, certification, and participation of minority and women-owned business enterprises in the City's procurement process and to promulgate those rules necessary to implement the purpose for which it is established.

4) Department of Business Services/Division of Labor Services:

DLS has the authority and responsibility to enforce a Citywide program to ensure that City contractors and subcontractors take required actions to ensure that women and minority group members are afforded equal employment opportunity and that all persons are protected from discrimination pursuant to federal, state, local laws and executive orders with regard to recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, terminations, rates of pay and other forms of compensation.



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CHAPTER 13
PROCUREMENT

§ 310. Scope. Except as otherwise provided in this charter or by statute,

1. all goods, services or construction to be paid for out of the city treasury or out of moneys under the control of or assessed or collected by the city shall be procured as prescribed in this chapter; provided, however, that for (i) the office of an independently elected city official, or (ii) the council, where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred thirty-four, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken respectively, by (i) such elected official or (ii) the speaker of the council, or another member of the council designated by the speaker with the approval of a majority of the members of the council, and

2. all goods, services or construction to be procured by an entity, the majority of the members of whose board are city officials or are individuals appointed directly or indirectly by city officials shall be procured as prescribed in this chapter; provided, however, that where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred thirty-four, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken by the governing board of such entity or by the chair of the board or chief executive officer of such entity pursuant to a resolution adopted by such board delegating such authority to such officer.

§ 311. Procurement Policy Board. a. There shall be a procurement policy board consisting of five members, three of whom shall be appointed by the mayor and two of whom shall be appointed by the comptroller. Each member shall serve at the pleasure of the appointing official. Members shall have demonstrated sufficient business or professional experience to discharge the functions of the board. At least one member appointed by the mayor and one member appointed by the comptroller shall not hold any other public office or public employment. The remaining members shall not be prohibited from holding any other public office or employment provided that no member may have substantial authority for the procurement of goods, services or construction pursuant to this chapter. The mayor shall designate the chair.

b. The board shall promulgate rules as required by this chapter, including rules establishing:

1. the methods for soliciting bids or proposals and awarding contracts, consistent with the provisions of this chapter;
2. the manner in which agencies shall administer contracts and oversee the performance of contracts and contractors;
3. standards and procedures to be used in determining whether bidders

are responsible;

4. the circumstances under which procurement may be used for the provision of technical, consultant or personal services, which shall include but not be limited to, circumstances where the use of procurement is (a) desirable to develop, maintain or strengthen the relationships between non-profit and charitable organizations and the communities where services are to be provided, (b) cost-effective, or (c) necessary to (i) obtain special expertise, (ii) obtain personnel or expertise not available in the agency, (iii) to provide a service not needed on a long-term basis, (iv) accomplish work within a limited amount of time, or (v) avoid a conflict of interest;

5. the form and content of the files which agencies are required to maintain pursuant to section three hundred thirty-four and such other contract records as the board deems necessary and appropriate;

6. the time schedules within which city officials shall be required to take the actions required by this chapter; sections thirteen hundred four and thirteen hundred five, or by any rule issued pursuant thereto, in order for contracts to be entered into, registered or otherwise approved, and recommended time schedules within which city officials should take action pursuant to any other provision of law or rule regarding individual contracts. The promulgation of rules defining time schedules for actions by the division of economic and financial opportunity of the department of small business services and the division of labor services of such department shall require the approval of each division, as such rules pertain to actions required of such divisions, prior to the adoption of such rules by the procurement policy board;

7. procedures for the fair and equitable resolution of contract disputes; and

8. such other rules as are required by this chapter.

c. The board may promulgate such additional rules, policies and procedures consistent with and as may be necessary to implement the provisions of this chapter. The board shall annually review all of its rules, policies and procedures and make such revisions as the board deems necessary and desirable. Nothing herein shall prevent the board from reviewing its rules, policies, and procedures, and making such revisions as the board deems necessary and desirable, more than once per year.

d. In the promulgation of any rules pertaining to the procurement of construction or construction related services, the board shall consult with any office designated by the mayor to provide overall coordination to the city's capital construction activities.

e. The board shall make such recommendations as it deems necessary and proper to the mayor and the council regarding the organization, personnel structure and management of the agency procurement function including, where appropriate, recommendations for revision of this charter or local laws affecting procurement by the city. Such reports may include recommendations regarding agency use of advisory groups to assist in preparation of bids or proposals and selection of contractors. The board shall also review the form and content of city contract documents and shall submit to the law department recommendations for standardization and simplification of contract language.

f. The board shall not exercise authority with respect to the award or administration of any particular contract, or with respect to any dispute, claim or litigation pertaining thereto.

§ 312. Procurement; general rule and exceptions. a. Prior to entering

into or renewing a contract valued at more than one hundred thousand dollars to provide technical, consultant, or personal services, an agency shall follow the procedure established herein.

1. Prior to issuing an invitation for bids, request for proposals, or other solicitation, the agency shall determine whether such contract will directly result in the displacement of any city employee. If the agency determines that such result would not occur, it shall include a certification to that effect, signed by the agency head, in any invitation for bids, request for proposals, or other solicitation. If the agency determines that such result would occur, the agency shall determine the costs incurred and the benefits derived in performing the service, consistent with the scope and specifications within the solicitation, with city employees, and shall submit such analysis, with all supporting documentation, prior to issuance of any solicitation, to the comptroller.

2. Immediately upon receipt of bids and proposals, the agency shall submit such determination, analysis, and supporting documentation to the council and to the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of subdivision a of this section.

3. Prior to award of a contract, the agency shall perform a comparative analysis of the costs expected to be incurred and the benefits expected to be derived from entering into a contract with the proposed vendor, based on such vendor's best and final offer, and such agency's analysis of the costs incurred and the benefits derived from providing the service with city employees. If the agency head intends to award the contract, he or she shall submit the reasons therefor, together with such analysis, and all supporting documentation, to the comptroller, the council, and the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of paragraph a of this section.

4. The council may, within thirty days after receipt of such reasons, analysis, and supporting documentation hold a hearing on this matter. No contract award shall be made prior to the expiration of this thirty-day period or a council hearing, whichever is sooner.

5. a. All cost and comparative analyses required under this section shall be conducted in accordance with standard methodology of the office of management and budget, and consistent with the rules of the procurement policy board, as both are modified herein, subject to further modification by local law. Such analyses shall include all reasonable costs associated with performing the service using city employees and all reasonable costs associated with performing the service under the proposed contract.

b. Such analyses shall further include, the total number, qualifications, job descriptions, and titles of all personnel to be employed by the vendor under the proposed contract, as well as the nature and cost of salaries and benefits to be provided to such personnel.

c. Such analyses shall further include, but not be limited to, the cost of employee supervision directly related to the provision of the service, vendor solicitation, contract preparation, contract administration, monitoring and evaluating the contractor, capitalization of equipment over the period such equipment shall be in use, supplies; the cost of providing the equivalent quantity and quality of service by city employees compared to the cost of providing such service by contract, based upon the best and final offer of the proposed vendor, and such other factors as will assist in arriving at full and accurate

cost determinations and comparisons.

6. The reasons given to award the contracts shall include all factors that have been considered in determining whether contracting for this service is in the best interest of the city, whether or not such reasons are contained within the cost or comparative analyses. Such factors shall include, but not be limited to, the potential for contractor default, the time required to perform the service, and the quality of the service to be delivered.

7. The mayor or his or her designee may prepare and implement a plan of assistance for displaced city employees, which may include, but need not be limited to, training to place such employees in comparable positions within the contracting agency or any other agency. The cost of such assistance plan may be included within the cost of contracting-out in the cost and comparative analyses.

8. For the purpose of this section, "displacement" shall mean any employment action that results in a reduction in the number of funded positions, including but not limited to, those resulting from the layoff; demotion; bumping; involuntary transfer to a new class, title, or location; time-based reductions, or reductions in customary hours of work, wages, or benefits of any city employee.

b. 1. Except as provided for in sections three hundred fourteen, three hundred fifteen and three hundred sixteen, contracts shall be awarded by competitive sealed bidding under such rules as shall be made by the procurement policy board, except that, in a special case as defined in subdivision b of this section, the head of an agency proposing to award such contract may order otherwise in accordance with policies and procedures established by the procurement policy board.

2. A determination by the head of an agency to use other than competitive sealed bidding except as provided for by sections three hundred fourteen and three hundred sixteen shall be made in writing, stating the reasons why competitive sealed bidding is not practicable or not advantageous and why the method of procurement selected pursuant to section three hundred seventeen is the most competitive alternative that is appropriate under the circumstances. The head of the agency shall include the determination or a summary of the determination in the notice of solicitation, or for an emergency procurement in the notice of award, required to be published pursuant to section three hundred twenty-five of this chapter.

c. 1. For the purposes of this chapter, the term "special case" shall be defined as a situation in which it is either not practicable or not advantageous to the city to use competitive sealed bidding for one of the following reasons:

i. specifications cannot be made sufficiently definite and certain to permit selection based on price alone;

ii. judgment is required in evaluating competing proposals, and it is in the best interest of the city to require a balancing of price, quality, and other factors;

iii. the good, service or construction to be procured is available only from a single source;

iv. testing or experimentation is required with a product or technology, or a new source for a product or technology, or to evaluate the service or reliability of such product or technology; or

v. such other reasons as defined by rule of the procurement policy board.

2. The procurement policy board may provide by rule that it is either not practicable or not advantageous to the city, for one of the reasons set forth in paragraph one of this subdivision, to procure a specified

type of good, service or construction by competitive sealed bidding.

§ 313. Competitive sealed bidding. a. The term competitive sealed bidding shall mean a method of procurement where the award of a contract is made to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

b. Procedures for competitive sealed bidding.

1. Bids shall be solicited through an invitation for bids, which shall include a purchase description and a notice of where vendors may obtain a copy of all contractual terms and conditions applicable to the procurement. A notice of the intention to solicit bids shall be publicly advertised in accordance with the provisions of section three hundred twenty-five of this chapter. The terms of such contracts shall be settled by the corporation counsel as an act of preliminary specification to an invitation for bids.

2. The agency letting the contract may reject all bids if it shall deem it for the interest of the city so to do; if not, it shall, without other consent or approval, award the contract to the lowest responsible bidder, unless the mayor shall determine in writing, justifying the reasons therefor, that it is in the best interest of the city that a bid other than that of the lowest responsible bidder shall be accepted. Such determination shall be published in the City Record. Tie bids are to be decided by the agency letting the contract and the award made. Whenever a contract is awarded to other than the lowest bidder because the lowest bidder is determined by the agency not to be a responsible bidder or because the lowest bid is determined by the agency to not meet the requirements and criteria set forth in the invitation for bids, the agency making such determination and awarding such contract shall immediately notify the lowest bidder of such determination and shall file in the agency contract file a statement in detail of the reasons therefor.

3. Any bidder who is declared not responsible by an agency and any bidder whose bid is determined by an agency to not meet the requirements and criteria set forth in the invitation for bids may, within five days of receipt of notice of the agency decision, appeal such decision to the agency head. A determination of an agency head of an appeal of a decision of non-responsibility may be appealed to the mayor who shall take final action regarding such matter. A determination of an agency head of an appeal of a decision that a bid does not meet the requirements and criteria set forth in the invitation for bids shall be final.

c. No bid shall be valid unless accompanied by a deposit in the amount and manner set forth and specified in the proposal; provided, however, that the procurement policy board shall establish such requirements for bid deposits as are necessary and practicable, and, pursuant to rules and standards, may waive the bid deposit requirement for specific classes of purchase or types of transactions. Upon the award of the contract the deposits of unsuccessful bidders shall be returned to them, and the deposit of the successful bidder shall be returned upon execution of the contract and furnishing of the required security.

d. Every invitation for bids shall contain a provision that in the event of the failure of the bidder to execute the contract and furnish the required security within ten days after notice of the award of the contract, the deposit or so much thereof as shall be applicable to the amount of the award made shall be retained by the city, and the bidder shall be liable for and shall agree to pay on demand the difference

between the price bid and the price for which such contract shall be subsequently relet, including the cost of such reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid.

§ 314. **Small purchases.** a. Notwithstanding any other provision of this charter, the procurement policy board and the council may, by concurrent action, establish dollar limits for procurement of goods, services, construction, or construction-related services that may be made without competition or without public advertisement. Awards pursuant to this section shall be made in accordance with rules of the procurement policy board.

b. On or before September thirtieth, two thousand and three, and on or before the last day of every quarter thereafter, the mayor or his or her designee shall submit to the council and the comptroller a report detailing each small purchase award made pursuant to this section during the quarter that ended three months before such report is due and for which information is required to be contained in the computerized data base maintained pursuant to subdivision a of section 6-116.2 of the administrative code. Such report shall provide the name of the vendor selected to fulfill the requirements of each such small purchase award, the date and dollar amount of each such small purchase award and the type of goods or services provided.

§ 315. **Emergency procurement.** Notwithstanding the provisions of section three hundred twelve of this chapter, in the case of an unforeseen danger to life, safety, property or a necessary service, an emergency procurement may be made with the prior approval of the comptroller and corporation counsel, provided that such procurement shall be made with such competition as is practicable under the circumstances, consistent with the provisions of section three hundred seventeen of this chapter. A written determination of the basis for the emergency and the selection of the contractor shall be placed in the agency contract file and the determination or summary of such determination shall be included in the notice of the award of contract published pursuant to section three hundred twenty-five of this chapter.

§ 316. **Intergovernmental procurement.** Notwithstanding any other requirement of this chapter,

a. any goods, services or construction may be procured, ordered or awarded through the United States General Services Administration, or any other federal agency if the price is lower than the prevailing market price, and

b. any goods, services or construction may be procured, ordered or awarded through the New York State office of general services, or any other state agency, if the price is lower than the prevailing market price.

§ 317. **Alternatives to competitive sealed bidding.** a. If, in accordance with section three hundred twelve, an agency determines that the use of competitive sealed bidding is not practicable or not advantageous to the city, the agency shall select the most competitive alternative method of procurement provided for by sections three hundred eighteen through three hundred twenty-two which is appropriate under the circumstance. Each agency contract file shall contain documentation of such determination and of the basis upon which each contract is awarded,

as is required by the procurement policy board.

b. Each contract for goods, services or construction in value of more than two million dollars proposed by an agency to be awarded which is let by other than (i) competitive sealed bidding, (ii) competitive sealed bids from prequalified vendors, or (iii) competitive sealed proposals, where the weight assigned to each of the factors or criteria to be considered in selecting the proposal most advantageous to the city will be set forth in a writing filed in the agency contract file prior to the opening of proposals, shall require the approval of the mayor or a deputy mayor prior to its execution. The mayor or deputy mayor shall not delegate the authority to make such approvals to any other body or official.

§ 318. **Competitive sealed bids from prequalified vendors.** In accordance with section three hundred seventeen, bids may be solicited from vendors who have been prequalified for the provision of a good, service or construction pursuant to section three hundred twenty-four by mailing notice to each prequalified vendor or, if special circumstances require, to a selected list of prequalified vendors. Award of the contract shall be made in accordance with the provisions of section three hundred thirteen of this chapter. A determination to employ selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the agency and approved by the mayor.

§ 319. **Competitive sealed proposals.** In accordance with section three hundred seventeen, proposals may be solicited through a request for proposals with award to the responsible offeror whose proposal is determined to be the most advantageous to the city, taking into consideration the price and such other factors or criteria as are set forth in the request for proposals. No other factors or criteria shall be used in the evaluation and award of the contract except those specified in the request for proposals. Discussions may be conducted with responsible offerors who submit proposals, provided that offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of the proposals.

§ 320. **Competitive sealed proposals from prequalified vendors.** In accordance with section three hundred seventeen, proposals may be solicited from vendors who have been prequalified for the provision of a good, service or construction pursuant to section three hundred twenty-four by mailing notice to each prequalified vendor or, if special circumstances require, to a selected list of prequalified vendors. Award of the contract shall be made in accordance with the provisions of section three hundred nineteen. A determination to employ selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the agency and approved by the mayor.

§ 321. **Sole source.** a. In accordance with section three hundred seventeen, a contract may be awarded for a good, service or construction without competition when an agency determines, pursuant to rules promulgated by the procurement policy board, that there is only one source for the required good, service or construction. The agency contract file shall contain the agency's determination that only a single source is available for the required good, service or construction, including the process by which the agency made such

determination. Copies of such notice shall be filed with the comptroller,

b. Whenever an agency determines that there is only a single source for a good, service or construction, an agency shall give immediate notice in the City Record of such determination and shall in such notice solicit the application of vendors qualified to provide such good, service or construction, or interested in providing such good service or construction in the future. The procurement policy board shall by rule define the timing and duration of such notification to ensure that vendors qualified to provide such good, service or construction have sufficient opportunity to express their interest to the agency prior to the initiation of any sole source negotiation; provided, however, that if the agency has determined that it should not reveal to the vendor with whom it is negotiating that it is doing so on a sole source basis under circumstances defined by rule of the procurement policy board, the notice required by this subdivision shall be made upon the completion of such negotiations or the award of the contract. Vendors interested in providing such good, service or construction in the future shall be prequalified in accordance with section three hundred twenty-four, or shall be included for receipt of notice in accordance with subdivision a of section three hundred twenty-five.

§ 322. Alternative procurement procedures. In accordance with section three hundred seventeen, a contract may be awarded according to another procurement procedure established by rule of the procurement policy board, under circumstances, defined by rule of the procurement policy board, in which the use of such procedures is in the best interest of the city. An agency determination to utilize such an alternative procurement procedure for a particular procurement or for a particular type of procurement shall require the written approval of the mayor prior to seeking bids or proposals. The agency contract file shall contain the determination to use an alternative procurement procedure which shall state (1) which circumstances defined by the board to be in the best interest of the city apply to the procurement, including the basis upon which the agency made such determination, and (2) which procedure, as defined by the board pursuant to this section, was used in awarding the contract.

§ 323. Multi-step sealed proposals. A preliminary request for proposals may be issued requesting the submission of unpriced offers. Submissions in response to such a preliminary request for proposals may be relied upon by an agency (a) to solicit competitive sealed bids in accordance with section three hundred thirteen of this chapter; (b) to solicit competitive sealed bids from prequalified vendors in accordance with section three hundred eighteen; (c) to solicit competitive sealed proposals in accordance with section three hundred nineteen; or (d) to solicit proposals from prequalified vendors in accordance with section three hundred twenty.

§ 324. Prequalification. a. Agencies shall maintain lists of prequalified vendors and entry into a prequalified group shall be continuously available. Prospective vendors may be prequalified as contractors for the provision of particular types of goods, services and construction, in accordance with general criteria established by rule of the procurement policy board which may include, but shall not be limited to, the experience, past performance, ability to undertake work, financial capability, responsibility, and reliability of prospective

bidders, and which may be supplemented by criteria established by rule of the agency for the prequalification of vendors for particular types of goods, services or construction or by criteria published in the City Record by the agency prior to the prequalification of vendors for a particular procurement. Such prequalification may be by categories designated by size and other factors.

b. Any vendor who is denied prequalification or whose prequalification is revoked by an agency may appeal such decision to the agency head. A determination of an agency head may be appealed to the office of administrative trials and hearings for a hearing and such office shall take final action regarding such matter. A decision by an agency to suspend a vendor's prequalification may be appealed to the agency head, provided that if such suspension extends for more than three months it shall be deemed a revocation of the prequalification for the purposes of this section.

§ 325. Notification of contract opportunities and awards. a. Pursuant to rules of the procurement policy board, each agency shall

1. for each category of goods, services or construction which is regularly procured by the agency, periodically publish in the City Record a notice soliciting the names of vendors interested in being notified of future procurement opportunities in each such category,

2. for each category of goods, services or construction for which the agency prequalifies vendors for future procurement, periodically publish in the City Record a notice soliciting the names and qualifications of vendors interested in being considered for prequalification for such category, and

3. publish in the City Record, and, where appropriate, in newspapers of city, state or national distribution and trade publications, notice of

(a) the solicitation of bids or proposals pursuant to section three hundred thirteen and three hundred seventeen through three hundred twenty-two, where the value of a contract is estimated to be above the small purchase limits, except where the agency has determined pursuant to section three hundred eighteen or three hundred twenty that solicitation should be limited to prequalified vendors;

(b) the award of a contract exceeding the small purchase limits in value. Each such notice of award shall indicate the name of the contractor, the dollar value of the contract, the procurement method by which the contract was let, and for contracts let by other than competitive sealed bidding, a citation of the clause of subdivision b of section three hundred twelve pursuant to which a procurement method other than competitive sealed bidding was utilized.

b. The procurement policy board, in consultation with the commissioner of citywide administrative services, shall promulgate rules providing for the publication and content of notices of contract actions required by this chapter. Such rules shall include provisions regarding,

i. the timing and frequency of notices,

ii. the required duration of solicitation periods,

iii. the form and content of notices, including the organization and presentation of such notices within standard categories of goods, services and construction which are sufficiently detailed to provide meaningful distinctions among categories.

c. The notice required by subparagraph a of paragraph three of subdivision a of this section shall not apply to contracts awarded on an emergency basis pursuant to section three hundred fifteen, provided that the agency shall, as soon as is practicable, publish notice that such a

contract has been entered into, pursuant to rules of the procurement policy board, nor shall such notice requirements apply where the notice would disclose litigation strategy or otherwise impair the conduct of litigation by the city.

§ 326. Public hearings on contract awards. a. Prior to entering into any contract for goods, services or construction to be awarded by other than competitive sealed bidding or competitive sealed bids from prequalified vendors, the value of which exceeds one hundred thousand dollars, the agency shall upon reasonable public notice conduct a public hearing to receive testimony regarding the proposed contract. Notwithstanding the preceding sentence, if, within a period of time after such notice, which period of time shall be determined by the procurement policy board, no individual requests an opportunity to speak at such a public hearing with respect to any such proposed contract the value of which does not exceed five hundred thousand dollars, then such public hearing need not be conducted. The procurement policy board may by rule exempt from this public hearing requirement contracts to be let which do not differ materially in terms and conditions, as defined by the board, from contracts currently held by the city where the parties to such contracts are the same; provided, that under no circumstance may such exemption apply to any contract in value exceeding ten million dollars.

b. The requirements of this section shall not apply to any procurement (i) let pursuant to a finding of an emergency under section three hundred fifteen, (ii) required to be made on an accelerated basis due to markets which experience significant, short-term price fluctuations, as identified by rule of the board, or (iii) where a public hearing would disclose litigation strategy or otherwise impair the conduct of litigation by the city.

§ 327. Certification of legal authority and procedural requisites. a. In the case of any contract which is let by other than competitive sealed bidding, the mayor shall certify, prior to the filing of the contract with the comptroller for registration in accordance with section three hundred twenty-eight of this chapter, that the procedural requisites for the solicitation and award of the contract have been met. The mayor may delegate such function to the agency proposing to award a contract only upon adequate assurance of an agency's capacity to comply with procedural requirements.

b. The corporation counsel shall certify prior to the filing of a contract with the comptroller for registration in accordance with section three hundred twenty-eight of this chapter, that each agency proposing to award a contract has legal authority to award each such contract.

§ 328. Registration of contracts by the comptroller. a. No contract or agreement executed pursuant to this charter or other law shall be implemented until (1) a copy has been filed with the comptroller and (2) either the comptroller has registered it or thirty days have elapsed from the date of filing, whichever is sooner, unless an objection has been filed pursuant to subdivision c of this section, or the comptroller has grounds for not registering the contract under subdivision b of this section.

b. Subject to the provisions of subdivision c of this section, the comptroller shall register a contract within thirty days unless the comptroller has information indicating that:

i. there remains no unexpended and unapplied balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract, as certified by the officer making the same;

ii. that a certification required by section three hundred twenty-seven of this chapter has not been made; or

iii. the proposed vendor has been debarred by the city in accordance with the provisions of section three hundred thirty-five.

c. The comptroller may, within thirty days of the date of filing of the contract with the comptroller's office, object in writing to the registration of the contract, if in the comptroller's judgment there is sufficient reason to believe that there is possible corruption in the letting of the contract or that the proposed contractor is involved in corrupt activity. Such objection shall be delivered within such thirty day period to the mayor setting forth in detail the grounds for the comptroller's determination. After the mayor has responded to the comptroller's objections in writing, indicating (i) the corrective actions if any, that have been taken or will be taken in response to the comptroller's objections, or (ii) the reasons why the mayor disagrees with the comptroller's objections, the mayor may require registration of the contract despite the comptroller's objections. Such response by the mayor shall not serve as the basis for further objection by the comptroller, and the comptroller shall register the contract within ten days of receipt of the mayor's response.

d. The requirements of this section shall not apply to

(1) an emergency contract awarded pursuant to section three hundred fifteen or to an accelerated procurement as defined under section three hundred twenty-six, provided that the agency shall, as soon as is practicable, submit any such contract to the comptroller for an audit of the procedures and basis for the determination of the need for an emergency or accelerated procurement, or

(2) a contract awarded pursuant to this chapter for the provision of goods, services or construction that is not to be paid for out of the city treasury or out of moneys under the control of the city, provided that the board of the entity awarding such a contract shall within ten days of awarding contract, file a copy of such contract and any related materials specified by the mayor, with the mayor or the mayor's designee for purposes of section three hundred thirty-four of this charter.

§ 329. By whom procured. a. All services to be performed by contract, including the furnishing of goods incident thereto, shall be obtained by the agency for whose use the appropriation therefor shall have been made, except as otherwise provided by law or by rule of the procurement policy board.

b. All other goods shall be purchased or procured by the department of citywide administrative services, except as otherwise provided pursuant to this chapter or other law.

c. Pursuant to rules of the procurement policy board and subject to other sections of this chapter, each agency may purchase directly goods in an amount not to exceed one thousand dollars for each transaction or, with the prior approval of the commissioner of citywide administrative services, in an amount not to exceed five thousand dollars for each transaction. The limitation of this subdivision shall not apply to purchases by an agency under a vendor contract entered into by the commissioner of citywide administrative services.

d. The dollar limits for direct agency purchases without the prior approval of the commissioner of citywide administrative services

pursuant to subdivision c of this section may be raised to five thousand dollars for each transaction for any or all agencies by the commissioner of citywide administrative services with the approval of the mayor. Any proposed increases in the limits for such purchases above five thousand dollars shall be subject to the further approval of the comptroller. Any increase in dollar limits pursuant to this subdivision shall be published in the City Record and may be rescinded by the commissioner of citywide administrative services, the mayor, or the comptroller.

§ 330. **Inspection.** Inspection and acceptance or rejection of all deliveries of goods shall be made by the agency that makes the direct purchase other than under a vendor contract. The commissioner of citywide administrative services may authorize an agency to which delivery is made to perform such functions on purchases made by the department of citywide administrative services subject to standards and policies of the commissioner. The comptroller may continue to perform such inspectional duties as are necessary for auditing purposes, including ascertainment of whether items purchased and paid for by the department of citywide administrative services or other agencies have been received and put to use by agencies.

§ 331. **Specifications.** All purchases shall be based upon specifications which are definite and certain, which permit of competition and which shall not be at variance with standard specifications for the various classes of goods approved by the commissioner of citywide administrative services. Before adopting standard specifications the commissioner shall obtain and consider the recommendations of agencies using the items to be standardized.

§ 332. **Payments procedure.** The procurement policy board shall promulgate rules for the expeditious processing of payment vouchers by city agencies and departments including (i) the maximum amount of time allowed for the processing and payment of such vouchers from the later of (a) the date such vouchers are received by the agency, or (b) the date on which the goods, services or construction to which the voucher relates have been received and accepted by the agency, (ii) a program for the payment of interest to vendors on vouchers not paid within the maximum amount of time pursuant to clause i of this subdivision, (iii) a process for the allocation and charging of any such interest payments to the budget of the agency responsible for the delay leading to the interest payments and (iv) agency reporting on the promptness of such payments in such form and containing such information as the board shall prescribe. The board shall coordinate and publish such agency prompt payment reports.

§ 333. **Evaluation and monitoring of contractor performance.** a. Each agency letting contracts shall monitor the performance of every contractor. Information with respect to contractor performance shall be maintained in a central place in accordance with subdivision c of section three hundred thirty-four.

b. 1. If a borough president determines there is reason to believe a term or condition of a contract providing for the delivery of services in the borough is not being complied with and that the contract should be terminated for noncompliance, modified, not renewed, modified at the time of renewal, or that the existing terms of the contract should be enforced, the borough president shall document in writing the reasons for that determination and present such determination, with a

recommendation for appropriate action, to the agency head for review. In the case of a recommendation that a contract should not be renewed or should be modified at the time of renewal, such recommendation shall be made to the agency head at least one hundred and twenty days prior to the expiration of the contract.

2. The agency head shall respond to the borough president's findings within ten business days from receipt of such findings, indicating what action, if any, shall be taken. If such action is not satisfactory to the borough president, the borough president shall, within thirty days of receipt of such responses, be authorized to require that a hearing be held in the borough by a contract performance panel consisting of the public advocate, the comptroller and the mayor, or their designees, to receive the testimony of the borough president and other interested persons on the borough president's recommendations. The hearing shall be held within twenty days from the borough president's request for the hearing. The head of the agency which procured the services in question, or a designee of such agency head, and the contractor whose performance is being evaluated, shall have the right, and it shall be their duty when requested by the panel, to appear and be heard.

3. The panel shall recommend, within thirty days of the date of such hearing, such action as it deems appropriate and shall promptly deliver its recommendations in writing to the agency head, borough president and contractor. Within thirty days of receipt of the panel's recommendation, the agency head shall respond in writing to the panel and the borough president, indicating which of the panel's recommendations shall be acted upon and what, if any, alternative action will be taken.

4. In the case of any contract regarding which more than one borough president has submitted a determination in accordance with paragraph one of this subdivision, the agency receiving such determinations shall notify each such borough president of the agency response submitted in accordance with paragraph two of this subdivision. A hearing, if any, held shall include the comments of all such borough presidents.

§ 334. Information on city contracts. a. Agency contract files. Each agency shall maintain files containing information pertaining to the solicitation, award and management of each contract of the agency in accordance with standard record maintenance requirements established pursuant to section three thousand four of this charter. The agency contract files shall contain copies of each determination, writing or filing required by this chapter pertaining to a contract and such information as is prescribed by rule of the procurement policy board, in such form as is prescribed by the procurement policy board. Agency contract files shall be open to public inspection with adequate protection for information which is confidential.

b. Requests by elected officials for contract documentation. Whenever an elected official of the city requests documentation relating to the solicitation or award of any city contract, the mayor and city agencies shall promptly provide such documentation as is requested or shall promptly respond to the requesting official with reason why such documentation cannot be provided. If the mayor or agency is unable to provide the requested documentation within ten business days of the day the request is received, the mayor or agency shall within such time deliver to the requesting official a statement of the reasons the documentation can not be promptly provided and shall include in such statement a timetable within which the documentation will be provided, not to exceed thirty days from the date of the original request.

c. Centralized contract and contractor information. The mayor shall

ensure that copies of city contracts and other standard information regarding city contracts and contractors are reasonably available for public inspection in accordance with provisions of section one thousand sixty-four of this charter.

§ 335. Centralized evaluation of contractor integrity, performance, and capability. The mayor may evaluate the integrity, performance, and capability of entities that contract with the city, are seeking to contract with the city, or may seek to contract with the city. The mayor may designate one or more agencies to participate in such efforts. The evaluations of the mayor and any agency designated by the mayor may include conclusions regarding whether the entity should be considered a responsible contractor. The mayor and any agency designated by the mayor may make such evaluations and conclusions available to agencies and the public through a centralized data base.

CHAPTER 45-A OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

§ 1048. Office. There shall be an office of administrative trials and hearings which shall conduct adjudicatory hearings for all agencies of the city unless otherwise provided for by executive order, rule, law or pursuant to collective bargaining agreements. The office shall be directed by the chief administrative law judge, who shall be an attorney admitted to practice for at least five years in the state of New York. The chief administrative law judge shall be appointed by the mayor.

§ 1049. Powers of the chief administrative law judge.

1. The chief administrative law judge shall have authority to direct the office established pursuant to section one thousand forty-eight with respect to its management and structure and to appoint a staff of administrative law judges. Each administrative law judge shall be an attorney admitted to practice in the state of New York for at least five years. Each administrative law judge shall be appointed for a term of five years removable only for cause after notice and opportunity for a hearing on a record.

2. The chief administrative law judge shall establish rules for the conduct of hearings, in accordance with the requirements of chapter forty-five of the charter.

3. In the conduct of an adjudication, an administrative law judge may:

(a) hold conferences for the settlement or simplification of the issues;

(b) administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive evidence, and oversee and regulate discovery procedures;

(c) upon the request of an agency or any party, or upon the administrative law judge's own volition, subpoena the attendance of witnesses and the production of books, records, or other information;

(d) regulate the course of the hearing in accordance with agency rules and chapter forty-five of the charter, provided that if agency rules are silent as to a particular matter, the rules of the office of administrative trials and hearings shall apply;

(e) dispose of procedural requests or similar matters;

(f) make recommended or final findings of fact or decisions, determinations or orders, as authorized by law;

(g) take any other action authorized by law or agency rule consistent therewith.