

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

The Procurement Policy Board (PPB) has adopted an amendment to § 3-11, **Demonstration Projects For Innovative Products, Approaches, or Technologies, and to § 4-02, Contract Changes, of chapters 3 and 4 of Title 9 of the Rules of the City of New York**, pursuant to Sections 311 and 1043 of the New York City Charter. The amendment was published on May 13, 2009 in the City Record. A public hearing was held on June 18, 2009. The amendment was adopted by the Procurement Policy Board on June 24, 2009.

**Basis and Purpose of the Amendment**

In order to facilitate appropriate evaluation of demonstration projects, with provision for continued services during the time necessary to conduct a solicitation for such services if the demonstration is successful, the amendment to section 3-11 extends the standard length of the initial term of a demonstration project procurement from one year to three years, with provisions for the extension of the contract term for a period of up to one year when necessary to conduct the demonstration and evaluate its effectiveness with CCPO approval. The amendment to section 3-11 also allows an agency to initiate a demonstration project, and for client services programs allows an agency to initiate a demonstration project to solicit proposals for innovative approaches to the provision of new or existing services. The amendment to rule 4-02 conforms the rule to the changes to the rule 3-11.

**The Amended Rule**

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

Jose Maldonado, Chair

**Section 1. Subdivisions (a), (d), (e) and (f) of section 3-11 of Title 9 of the Rules of the City of New York is amended as follows:**

**Section 3-11                    DEMONSTRATION PROJECTS FOR INNOVATIVE  
   PRODUCTS, APPROACHES, OR TECHNOLOGIES.**

(a) Policy and Purpose. It is in the City's best interest to consider proposals for demonstration projects. A demonstration project is a short-term, carefully planned, pilot exercise designed to test and evaluate the feasibility and application of an innovative product, approach or technology not currently used by the City. Demonstration projects

may be proposed for goods, services or construction. They allow the City to observe and analyze effectiveness and efficiency without a large commitment of resources. Demonstration projects may be initiated by an unsolicited proposal, or by an agency on its own initiative. For client services programs, agencies may initiate a demonstration project in order to invite proposals for innovative approaches to the provision of existing or new services.

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(d) Contract Term. The initial term of a contract [Contracts] for a demonstration project should be for a term that is reasonable both to conduct the demonstration and to determine its effectiveness, and [projects ordinarily] shall not exceed [one year] three years. [In order to enter into a multi-term contract, the] The ACCO shall make a determination setting forth with specificity[

(1) why the effectiveness of the product, approach, or technology cannot be evaluated within one year, and

(2)] how the proposed term of the contract was determined. In making such determination, the ACCO may consider whether it would be in the City's best interest to ensure that no break in the provision of services occurs at the end of the demonstration project, if successful. If the ACCO makes such a determination, the ACCO should establish an initial term that, although no longer than three years, is long enough to allow for the subsequent solicitation of those services at the conclusion of the project's evaluation. In the event that a longer period is needed to allow for continuity of services and/or to evaluate the demonstration, the agency may extend the contract for an additional period of up to one year with CCPO approval.

(e) Notice. Prior to entering into negotiations for the award of a contract for a demonstration project exceeding the small purchase limits, the ACCO shall give notice of that determination by placing a notice in the City Record.

(1) Frequency. Notice of intent to enter negotiations for a demonstration project exceeding the small purchase limits shall be published in not less than five consecutive editions of the City Record at least ten calendar days before entering into negotiations with the vendor and shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication.

(2) Content. Such notice shall include:

(i) agency name;

(ii) PIN;

- (iii) title and/or brief description of the goods, services, or construction to be procured;
- (iv) estimated quantity, if any;
- (v) name of the proposed vendor, if the agency has identified a vendor;
- (vi) summary of the determination;
- (vii) how vendors may express their interest in providing such good, [service] services or construction; and
- (viii) due date.

(f) Evaluation. Upon the evaluation of expressions of interest received, if any, the ACCO shall make a determination of how to proceed, which includes the basis for such determination. Where it appears that the product, approach, or technology is already competitively available in the marketplace, the ACCO may determine that a competitive solicitation may be issued; or, if it appears that the product, approach, or technology can be reasonably evaluated using short-term contracts with more than one vendor, the ACCO may determine that negotiations to establish such demonstration projects may be conducted with more than one vendor, or negotiations may proceed with the single vendor originally identified. For client services, whether or not an initial vendor has been identified, an agency may utilize the demonstration project method to solicit proposals for innovative approaches to the provision of existing or new services, in which case the ACCO may determine that negotiations to establish such demonstration projects may be conducted with more than one vendor, or negotiations may proceed with the single vendor originally identified, if any. To the extent required by Section 322 of the Charter, an agency determination to utilize an alternative procurement procedure for a particular procurement or for a particular type of procurement shall require the approval of the Mayor prior to seeking bids or proposals. The CCPO shall have final authority with respect to evaluation, acceptance, and rejection of all demonstration projects.

**Section 2. Subparagraphs (iv), (v) and (vi) of paragraph (1) of subdivision (b) of section 4-02 of Title 9 of the Rules of the City of New York are renumbered subparagraphs (v), (vi) and (vii), respectively, and a new subparagraph (iv) is added, to read as follows.**

**Section 4-02 CONTRACT CHANGES.**

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(b) Types of Changes Permitted.

(1) Changes may include any one or more of the following:

(i) specification changes to account for design errors or omissions;

(ii) changes in contract amount due to authorized additional or omitted work. Any such changes require appropriate price and cost analysis to determine reasonableness. In addition, except for non-construction requirements contracts, all changes that cumulatively exceed the greater of ten percent of the original contract amount or \$100,000 shall be approved by the CCPO;

(iii) extensions of a contract term for good and sufficient cause for a cumulative period not to exceed one year from the date of expiration of the current contract. Requirements contracts shall be subject to this limitation;

(iv) extensions of a contract term pursuant to Section 3-11(d)(2) of these Rules;

(v) changes in delivery location;

(vi) changes in shipment method; and

(vii) any other change not inconsistent with this section.

