AMENDMENT NUMBER ONE TO RULES OF THE PROCUREMENT APPEALS BOARD

Section IX of the Rules of the Procurement Appeals Board is hereby amended by deleting subsection A in its entirety and substituting in lieu thereof a new subsection A as follows:

Delete:

"A. The presence of at least three of the five members of the Board shall be necessary to constitute a quorum to conduct the business of the Board and the concurrence of at least three of the five members of the Board shall be required to render any decision."

Add:

"A. The presence of at least three of the five members of the Board shall be necessary to constitute a quorum to conduct the business of the Board. Decisions of the Board shall be adopted by a majority vote of those Board members present and voting."

ADOPTED THIS 27th **DAY OF** February**, 2012**

Members of the Procurement Appeals Board:

Cynthia Croce

FILED IN THE OFFICE OF THE METROPOLITAN CLERK:

Date: FEB 28 2012

RULES OF THE PROCUREMENT APPEALS BOARD

I. AUTHORITY

These Rules are enacted pursuant to Metropolitan Code of Laws ("Code") section 4.36.080.

II. PURPOSE

The purpose of these Rules is to provide for the expeditious resolution of controversies brought before the Board.

III. SCOPE

These Rules shall apply to any appeal pursuant to Code sections 4.36.110 or 4.36.120.

IV. FILING NOTICE OF APPEAL

A. A notice of appeal must be timely submitted to the Chairperson of the Board, the Director of Finance.

B. The notice of appeal must be either mailed via U.S. Mail or hand-delivered to the Office of the Director of Finance, and must prominently state "Notice of Appeal."

C. No certain form of document is required for a notice of appeal; however, the Notice of Appeal must clearly identify the subject debarment, suspension, award, or solicitation, the identity of the appealing party or parties, their contact information, and the legal counsel for the same, if any. Additionally, the notice of appeal must state a brief summary of the reasons why the decision on debarment, suspension, award, or solicitation is being appealed.

D. The notice of appeal must immediately thereafter be provided in like manner to the Purchasing Agent. The Purchasing Agent shall then provide a copy of the notice of appeal to other interested parties (actual or known prospective bidders, proposers, or contractors) who were directly affected by the Purchasing Agent's subject decision or who would be directly affected by a contrary decision by the Board. The Purchasing Agent shall provide a list of the same to the Board.

E. The notice of appeal must include a copy of the notice of any decision made by the Purchasing Agent pursuant to Code section 4.36.010 or 4.36.020. The notice of appeal must also set forth the date of receipt of such decision, in order to enable the Board to determine if the appeal was timely filed pursuant to Code

sections 4.36.110 and 4.36.120, as applicable. If the Board decides at a meeting of the same that an appeal was not timely filed, the Board shall first advise the appellant of the same and provide the appellant with an opportunity to establish to the Board that the appeal was timely filed.

F. Upon receipt of any notice of appeal, a copy of these Rules of Procedure shall be mailed by the Chairperson of the Board or its designee to the appealing party or parties or their legal counsel.

V. SUBMISSIONS AND OTHER COMMUNICATIONS

A. All written communications or other materials conveyed between one or more of the parties to the appeal (inclusive of the Purchasing Agent) and the Board shall be simultaneously copied to all other parties to the appeal (exclusive of copies of these Rules, which shall not be provided to the Purchasing Agent with every appeal). Notation that such copies were sent is to be made on the face of the document submitted to the Board.

B. Documents, materials, and memorandums may be, but are not required to be, submitted to the Board prior to the hearing. If such is not submitted prior to the hearing, then in order to be submitted or presented at the hearing, copies of such must be provided simultaneously to each member of the Board in attendance, the Board's legal counsel in attendance, and all other parties to the appeal.

C. Parties to the appeal are expected to provide relevant non-privileged materials or information to one another upon a party's request. The Board may request that relevant non-privileged materials or information be provided by any party to the appeal to another party and to the Board.

VI. DISMISSAL

An appealing party may elect to dismiss its appeal, and may do so once without prejudice. Notice of Dismissal is effective only upon receipt by the Chairperson of the Board. Notice must be so received prior to the day of the Scheduled hearing on the appeal. After such dismissal, the appellant may submit another Notice of Appeal within seven days, regarding solicitations or awards, or within thirty days, regarding suspension or debarment. After the first dismissal, any dismissal will be with prejudice against the appellant.

VII. NOTICE OF HEARING

The Notice of Hearing shall state the date, time, and location of the hearing. A Notice of Hearing shall be provided to all appealing parties or their legal counsel, the Purchasing Agent, the Department of Law, and any Metropolitan Departments, Agencies, Boards, or Commissions with a direct interest in the appeal. The Notice of Hearing shall be simultaneously mailed to other interested parties (actual or known prospective bidders, proposers, or contractors) who were directly affected by

the Purchasing Agent's subject decision or who would be directly affected by a contrary decision by the Board, as identified by the Purchasing Agent.

VIII. HEARING PROCEDURE

A. All hearings and other meetings of the board shall be noticed to all parties to the appeal and to the public, and shall be open meetings as required by law.

B. Hearings of appeals are to occur in the chronological order in which appeals were filed with the Board, unless otherwise agreed to by the parties and permitted by the Board.

C. A court reporter or a tape recorder or other recording device shall be used to record the parties' presentations. Any party wishing to purchase a transcription from the court reporter or have a transcription produced from the recorded format may do so at its own cost.

D. The procedure for all appeal hearings shall be as follows:

(1) Announcement by the Chairperson of the Board or its delegee of the appeals to be heard, and the order of the same.

(2) Presentation by the Purchasing Agent, as to its decision.

(3) Presentation by the appealing party or parties, as to their appeal.

(4) Second presentation by the Purchasing Agent.

(5) Second presentation by the appealing party or parties.

(6) Discussion and deliberation by the Board.

E. Questions may be asked of any party to the appeal, or any of their proffered witnesses, by the members of the Board at any time during the hearing.

F. At the beginning of the hearing, the Board shall advise all parties to the appeal of any time limits on their presentations. In no event shall the Purchasing Agent be provided less time than the appealing parties, or vice versa. Appealing parties must decide among themselves how to allocate their collective time for presentations.

G. The Board may continue the hearing to a subsequent date.

H. All appealing parties, or their representatives (including legal counsel), must be present at the hearing of their appeal. If neither an appealing party nor its representative is present at the noticed hearing of the appeal, which hearing is not continued by the Board, the Board shall notify that party that its appeal shall be dismissed unless that party submits good cause otherwise in writing within ten calendar days. The Chairperson of the Board shall determine whether good cause has been shown.

IX. DECISION

A. The presence of at least three of the five members of the Board shall be necessary to constitute a quorum to conduct the business of the Board, and the concurrence of at least three of the five members of the Board shall be required to render any decision.

B. As to appeal of a debarment or suspension, a written decision shall be issued by the Board which shall state on its face whether, or the extent to which, the subject debarment or suspension was in accordance with the Constitution, statutes, the Metropolitan Code, regulations, and the best interest of the metropolitan government, and was fair. Such decision shall also state whether or not reinstatement of the debarred or suspended person was ordered.

C. As to appeal of a solicitation or award, a written decision shall be issued by the Board that shall state on its face whether the solicitation or award was in accordance with the Constitution, statutes, this code, regulations, and the terms and conditions of the solicitation.

D. A copy of the Board's decision on an appeal shall be mailed to all parties to the appeal within thirty calendar days following the date of the final hearing.

X. SECRETARY TO THE BOARD

A. The Board shall appoint a Secretary to assist the Board.

B. The Secretary shall be responsible for recording the minutes of the Board's meetings. The Secretary shall also be responsible for noting the date and time any appeal or submission is submitted to the Board. Such notation shall be made on the front of the document and shall be consistent in form.

XI. SUSPENSION OF THE RULES

In the interests of fairness and efficiency, the Board may from time to time suspend the operation of some or all of these Rules by concurrence of at least three members of the Board.

XII. AMENDING THESE RULES

These Rules may be amended by an affirmative vote of a majority of the Board. New Rules may be adopted likewise.

XIII. ROBERT'S RULES OF ORDER

In the event these Rules do not address a matter of procedure, the Board will be governed by Robert's Rules of Order, as revised.

XIV. EFFECTIVE DATE

These Rules shall be filed with the Clerk upon adoption, and shall take effect, prospectively and not retrospectively, ten calendar days after their adoption.

ADOPTED THIS 28 DAY OF AUGUST, 2008.

Members of the Procurement Appeals Board:

Chairperson

Member

Member

Member

Member

FILED IN THE OFFICE OF THE METROPOLITAN CLERK:

Marilyn S. Swing

Date: SEP 4 2008

Addendum A to Rules of the Procurement Appeals Board
Public Meeting Notice Policy

Whereas, Rule VII (A) of the Procurement Appeals Board provides that "all hearings and other meetings of the board shall be noticed to all parties to the appeal and to the public, and shall be open meetings as required by law;" and

Whereas, the Metropolitan Council enacted Ordinance BL2004-245, which requires all boards and commissions to have public meeting notice policies approved by the Department of Law.

Now, therefore, in accordance with its Rule VII, the Procurement Appeals Board establishes the following policy to be implemented by the Secretary for all meetings and hearings of the board.

A-1. Notice. Each notice of a meeting or hearing of the Procurement Appeals Board ("Notice") shall state the meeting or hearing's date, time, location, and agenda, which agenda will reasonably describe the matters to be deliberated or decided at the meeting or hearing.

A-2. Distribution of Notice. No later than Noon on the Friday preceding a hearing or meeting, the Notice shall be: (1) sent by electronic mail to local media, using a list maintained by the Department of Law; (2) sent by electronic mail to webteam@nashville.gov for publication; and, (3) provided by electronic mail to the Metropolitan Clerk's Office for posting on the City Hall bulletin board.

A-3. Interested Persons. A list shall be maintained by the board's Secretary of all persons who ask to individually receive notice of the board's meetings and hearings, and Notice shall be provided to those persons by either U.S. Mail or electronic mail, at the same time that public Notice is made as described above.

Adopted this 22nd day of June, 2005.

Members of the Procurement Appeals Board:

Chairperson

Cynthia Croom
Member

Donna Nicely
Member

Filed in the Office of the Metropolitan Clerk:

Marilyn S. Swing

Date: JUN 22 2005

Approved by the Department of Law:

Ashley McDaniel
Metropolitan Attorney

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

KARL F. DEAN , MAYOR

EXECUTIVE ORDER NO. 030

SUBJECT: Procurement Appeals Board.

I, Karl Dean, Mayor of the Metropolitan Government of Nashville and Davidson County, by virtue of the power and authority vested in me, do hereby amend former Mayor Purcell Executive Order No. 010 and find, direct and order the following:

I. The Procurement Appeals Board, as codified in the Metropolitan Code of Laws shall be composed of five (5) members including the chairperson. The chairperson and members of the board shall be appointed by the Mayor and may be directors, department heads, or other officials of metropolitan government in similar positions as determined by the mayor.

II. The appointed members shall have two (2) year terms. All vacancies on the Board shall be filled by the Mayor for the unexpired portions of any term.

III. Pursuant to section 4.36.080 of the Metropolitan Code of Laws, the Board shall adopt rules of procedure that, to the fullest extent possible, will provide for the expeditious resolution of controversies.

Ordered, Effective and Issued:

Karl F. Dean
Mayor

Date: March 17, 2008