



REQUEST  
FOR  
PROPOSALS

NEW YORK CITY DEPARTMENT OF  
DESIGN + CONSTRUCTION

# RFP



PIN



Pre-Proposal Conference

Submission Deadline

Project

MICHAEL R. BLOOMBERG  
Mayor

DAVID J. BURNEY, AIA  
Commissioner

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Deputy Commissioner  
Division of Structures

**DEPARTMENT OF DESIGN AND CONSTRUCTION**

**REQUEST FOR PROPOSAL**

**REQUIREMENTS CONTRACT FOR JOB ORDER CONTRACTING SYSTEM  
IN CONNECTION WITH VARIOUS CAPITAL PROJECTS INCLUDING  
RENOVATION, REHABILITATION AND NEW CONSTRUCTION AT VARIOUS SITES  
IN ALL BOROUGHES**

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## PREFACE

The City of New York is committed to achieving excellence in the design and construction of its capital program, and building on the tradition of innovation in architecture and engineering that has contributed to the City's prestige as a global destination. As part of this effort, the Department of Design and Construction (DDC) is please to announce the following contracting opportunity.

## SECTION 1. TIMETABLE

### A. RFP Issuance

#### Pre-Proposal Conference

A pre-proposal conference will be held at 10:00 AM on Tuesday, September 26, 2006 at DDC headquarters, 30-30 Thomson Avenue, Long Island City, NY 11101, in Conference Room 503. Attendance is recommended but not mandatory to propose on the contract described in this RFP, it is strongly encouraged.

#### 1. Submission Deadline

The proposer shall deliver, on or before 4:00pm on Tuesday, October 10,2006, the Proposal in a clearly marked envelope or package. The Proposal shall consist of two separate, clearly marked, sealed packages: (1) the Technical Proposal (1 original and 4 copies), and (2) the Fee Proposal (1 original).

Proposals shall be hand delivered to the contact person at the location listed below. Proposals received after the applicable due date and time prescribed in the RFP are late and will not be accepted except at the discretion of DDC pursuant to the applicable section of the City Procurement Policy Board Rules.

Carlo Di Fava (718) 391-1541  
Professional Contracts Section  
Department of Design and Contruction  
30-30 Thomson Avenue, 4<sup>th</sup> Floor (Entrance on 30<sup>th</sup> Place)  
Long Island City, NY 11101  
e-mail: difavac@ddc.nyc.gov

**NOTE:** Proposers are responsible for ensuring that the RFP response package is received by the Professional Contract Section by the deadline. Proposers are warned not to rely on signed delivery slips from their messenger services. Occasionally packages are delivered to the School Construction Authority located in the same building and the packages are not forwarded to the DDC Professional Contracts Section in a timely manner. Entrance to DDC is on 30<sup>th</sup> Place, not Thomson Avenue despite our Thomson Avenue house number.

2. Inquiries: In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing or by e-mail, no later than one week prior to the submission date prescribed in the RFP. In the

event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on DDC's website. All inquiries must be directed ONLY to the contact person listed in Paragraph A (1) above.

3. Addenda: Receipt of an addendum to this RFP by a proposer is to be acknowledged by attaching an original signed copy of the addendum to the Technical Proposal. All addenda shall become a part of the requirement for this RFP.
  
4. RFP Schedule: The following is the estimated timetable for receipt, evaluation, and selection of proposals. This is only an estimate and is provided to assist responding firms in planning.
  - a. Pre-Proposal Conference: Tuesday, September 26, 2006 at 10:00 AM.
  - b. Consultant Selection: Within four weeks of submission deadline.
  - c. Complete Contract Registration: Approximately three months from date of consultant selection.
  - d. Commence Work: When directed by DDC.

## **SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS**

### **A. Background and Objectives of the Project**

The New York City Department of Design and Construction is presently using computer based pre-priced units of work within the overall framework of fixed-priced construction contract for alteration, renovation, rehabilitation and/or minor new construction in all five borough of New York City. The system being used is called Job Order Contracting System (JOCS). The Consultant shall provide support, guidance, update and interpretations of the JOCS. The Consultant shall also update and revise manual and unit price books.

### **B. Joint Ventures and Other Consultant Relationships**

There is no minimum requirement for the proportion of work by either of the two joint ventured parties. Joint ventures must carry the required insurances either as policies written specifically for the joint venture entity, or by using their existing single entity policies with endorsements written for the joint venture activity.

DDC does not recognize the corporate configuration wherein one company is "in association with" another. Relationships between two or more firms shall be either as joint venture or prime consultant/subconsultant. In the event that a proposal is received wherein two or more firms are described as being "in association with" each other, DDC will treat the relationship as one of prime consultant/subconsultant(s). The RFP evaluation will be handled accordingly, and if chosen as a winner, the contract documents will show only the prime firm on the signature page, and all other firms treated as subconsultants.

### **C. Contract Term/Contract Estimate**

The term of the contract awarded from this RFP shall commence on the date set forth in the Written Notice to Proceed and run for 1,095 consecutive calendar days. The estimated contract value is \$750,000. At the commissioner's sole option, the term of contract may be renewed for 365 consecutive calendar days for up to \$250,000. The Proposer is advised to carefully review Article 5 to the attached contract, which sets forth the total anticipated time frame for this project.

### **D. Insurance**

The Consultant and all subconsultants performing services for this contract must provide the types and amounts of insurance specified in Exhibit B of the attached contract. The Proposer is advised to carefully review such insurance requirements.

E. Payment Provisions

Payment for all required services shall be in accordance with Article 6 of the attached contract. Information regarding the Fee Proposal is set forth in ***Attachment 3 of this RFP.***

### **SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS**

#### **A. TASK ORDER PROCESS**

Throughout the term of the Contract, as the need arises for architectural, engineering and construction related services with respect to a specific project, the Commissioner shall issue a Task Order to the Consultant. The Consultant shall provide services in accordance with the Task Order for the Project specified therein. The Consultant shall not perform services to this Contract until the Commissioner has issued a Task Order in accordance with Exhibit A of the attached Contract.

#### **B. CONSULTANT'S SERVICES**

The JOCS services the Consultant may be required to provide for the Project specified in the Task Order shall include without limitation the services set forth in Exhibit A of the attached Contract.

#### **C. CONSULTANT'S PERSONNEL**

The terms and conditions regarding the Consultant's obligation to provide personnel for the performance of services for the Project specified in the Task Order are set forth in Article 7 of the attached Contract. The Consultant agrees, throughout the term of this Contract, to provide personnel for the performance of all required architectural, engineering and construction-related services for the Project, as directed by the Commissioner. The Consultant shall provide such personnel through its own employees and/or through its Subconsultants.

## SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

A. Proposal Subdivisions: submit the proposal in separate, clearly labeled, sealed packages as follows:

1. Technical Proposal: (1 original and 4 copies): Include all the information requested in Subsection B below in the Technical Proposal. (Forms 254 and 255 are available at <http://nyc.gov/html/ddc/html/otherfrm.html>) The Technical Proposal package shall not include the Fee Proposal.
2. Fee Proposal (1 original): Include all of the elements requested in Subsection C below in the Fee Proposal. A forms for the submission of the Fee Proposal is included as Attachment 3 of this RFP

B. Technical Proposal

Include the following information in the Technical Proposal in the order outlined below. There may be further breakdowns of this format for each item, if the proposer so requires to clarify its proposal. DDC reserves the right to reject any proposal that does not conform to this general format:

### Introductory Material

- Cover Letter: Submit a maximum one-page cover letter, indicating the firm's name and address, and the name, address and telephone number of the person authorized to represent the firm. Include the DDC contract name and number.
- Table of Contents: Provide a table of contents of the material contained in the proposal.
- Summary: Submit a brief statement of the salient features of the proposal, including approach, qualifications and nature of the proposal project team. Do not include fee data in the summary.

### Support Documentation:

1. Firm's Experience with Job Order Contracting:
  - (a) Identify up to five (5) previous projects the proposer has performed which are similar in scope and type to the project described in this RFP. The description of each relevant project should preferably be limited to one page each. Provide information on the overall approach and understanding of the project. Provide information on staffing and the methodology of unit costing. In addition:

- Attach a completed SF-255 Form, which identifies the proposed Principal-in-charge and project manager on the subject project. A resume of each person on the project team should also be submitted in the SF-255 form.
- Attach a completed SF-254 and SF-255 form for each of the subconsultants proposed as part of the designation. (DDC must approve the actual subconsultants prior to award). Subconsultants may be included in the Prime's SF-255 form
- Attach visual materials of the firm's past work as they support this project. These may take the form of a printed brochure, photographs, slides, drawings, or similar images.

2. Proposed Project Team: Identify the following:

(a) Subconsultants: The Proposer must identify by name the specific Subconsultants it intends to use to perform the required service. A form is set forth as Attachment 2 of this RFP for the Proposer to identify the required Subconsultants.

(b) Key Personnel: The Proposer must identify by name the specific individuals who will perform the required services for those titles of Key Personnel which are set forth on the form included as Attachment 2 of this RFP. The Proposer must complete this form by (1) identifying the specific individuals who will perform the required services for the listed titles of Key Personnel, and (2) providing information concerning their qualifications.

NOTE: Proposers are advised that it is the intent of the City to secure the personal services of the Key Personnel identified in the proposer's Technical Proposal. Accordingly, such Key Personnel **MUST** be assigned to the Project. In accordance with Article 7 of the attached contract, failure by the Consultant to provide such Key Personnel will be considered a material breach of the contract and grounds for termination for cause. Replacement of such Key Personnel is subject to approval by the Commissioner. Any proposed replacement for Key Personnel must possess qualifications substantially similar to those of the Key Personnel being replaced and are subject to the prior written approval of the Commissioner. In addition, at the Commissioner's request at any time, the Consultant shall remove any Key Personnel or other personnel and substitute another employee of the Consultant or Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his sole discretion.

3. Technical Capability: Provide a statement of the proposed methodology, including project approach, problem solving techniques and level of engagement employed by the firm. Provide information on the firm experience in design and construction document, construction and scheduling, experience with Wick's law and implementation training.

4. Firm's Computer Systems Capability: The proposer shall describe the general capability of the firm in computer system application, skill in computerized costing analysis. The Proposer shall include information concerning (1) the number of full-time persons currently on staff, and (2) the projects on which the firm is currently working, the projects the firm has completed, and the future projects to which the firm is committed. All project information shall include the dollar values of the contract, as well as the schedule.
5. Statement of Understanding: Sign and attach this document (Attachment 1) to the Technical Proposal.

C. Fee Proposal

Submit a separate, sealed envelope containing a Fee Proposal. Utilize the Fee Proposal form enclosed as (Attachment 3) of this RFP.

The Consultant's Fee shall be calculated as a percentage of the dollar amount of construction work actually performed and accepted by the City utilizing the JOCS system. Refer to the contract, Article 6 for detailed description of the Consultant's fee.

- D. Acknowledgement of Addenda: The Acknowledgement of Addenda form (Attachment 4) serves as the proposer's acknowledgement of the receipt of addenda to this RFP that may have been issued by the Agency prior to the Proposal Due Date and Time. The proposer should complete this form as instructed on the form.

E. Proposal Package Contents ("Checklist")

The proposal Package should contain the following Materials:

1. Separate sealed, labeled envelope clearly marked "Technical Proposal" (1 original and 4 copies)
  - Statement of Understanding (Attachment 1)
  - Form for Identification of Subconsultants and for Key Personnel (Attachment 2)
  - Acknowledgement of Addenda (Attachment 4)
  - Confirmation of VENDEX Compliance and VENDEX Certification of No Change (Attachment 5) (download new 2004 VENDEX Questionnaires from [www.nyc.gov/vendex](http://www.nyc.gov/vendex))

2. Separate sealed, labeled envelope clearly marked "Fee Proposal"
  - Fee Proposal Form (Attachment 3)

## SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

### A. PROPOSAL EVALUATION

1. Selection Process:
  - a. A DDC evaluation committee will evaluate and score all Technical Proposals in accordance with qualitative and quantitative criteria set forth in the RFP (see Evaluation Criteria Subsection 2 below). This evaluation and scoring will determine the proposer's Technical Rating. DDC reserves the right to interview proposers and visit their offices for the purpose of clarifying their Technical Proposals, after which their Technical Ratings may be re-evaluated. Proposers will be ranked in accordance with the Technical Evaluation Score.
  - b. The Fee Proposals of the firms with the highest Technical Evaluation Scores will then be opened and considered.
2. Evaluation Criteria: Each of the evaluation criteria listed below is weighted by a factor of importance ranging from 0 to 100 points. A DDC evaluation committee will review, evaluate and score all Technical Proposals in accordance with these criteria to determine the proposer's Technical Rating.
  - a. Firm's Experience: [weight 50%]
  - b. Proposed Project Team: [weight 20%]
  - c. Technical Capability: [weight 20%]
  - d. Firm's Computer Systems Capability: [weight 10%]
3. Basis of Award

In accordance with the NYC Charter, DDC will award the contract to the responsible proposer 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.
4. Supply and Service Report

Upon selection, the successful proposer will be required to submit one original copy of the Department of Business Services Supply and Service Report, a copy of which can be downloaded from <http://www.nyc.gov/html/ddc/html/otherfrm.html>. Upon written notification; the proposer must submit the Service and Supply Report within ten days of such notification.

5. VENDEX

Upon selection, the successful proposer will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification, the proposer must submit a Confirmation of Vendex Compliance to DDC within five days of official notification. A form for this confirmation is set forth in the RFP.

**The proposer is advised that Vendex Questionnaires and procedures have changed. See [www.nyc.gov/vendex](http://www.nyc.gov/vendex) to download the new VENDEX Questionnaires and a Vendor's Guide to VENDEX or contact DDC's VENDEX Unit at 718-391-1565.**

(a) Submission: Vendex Questionnaires (if required) must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vendex, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007.

(b) Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, proposers may be obligated to complete and submit VENDEX Questionnaires. If required, Vendex Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after award.

6. Contract Finalization

Upon selection, the successful proposer will be asked to finalize a contract with DDC subject to the conditions specified in the RFP and to the agency's standard contract provisions. The contents of the selected proposal, together with this RFP and any addendum(s) provided during the proposal process, may be incorporated into the final contract to be developed by the agency.

## **SECTION VI. GENERAL INFORMATION TO PROPOSERS**

- A. Non-Binding Acceptance of Proposals: This RFP does not commit the City to award a contract for any services.
- B. Incurring Proposal Costs: The City of New York is not liable for any costs incurred in the preparation of a response to this RFP. If Proposers choose to participate in negotiations, they may be asked to submit such price, technical data, or other revisions to their proposals as may be required by the City.
- C. Confidentiality: The contents of a Proposer's RFP response are not deemed confidential unless the Proposer identifies those portions of its response which it deems confidential, or containing proprietary information, or trade secrets. The Proposer must provide justification as to why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal.
- D. Reserved Rights: All proposal material submitted becomes the property of the City and the City reserves the right, at its sole discretion, to:
1. Reject any and all proposals received in response to this RFP;
  2. Award a contract to other than the lowest-fee Proposer;
  3. Waive, modify or correct any irregularities in proposals received, after prior notification to the Proposer;
  4. Use without limitation any or all of the ideas from submitted proposals;
  5. Contract for all or selected parts of the Proposer's proposal, selecting from the services offered without affecting the itemized pricing;
  6. Extend the time for submission of all proposals after notification to all prospective Proposers;
  7. May conduct discussions with offerers submitting acceptable proposals, award may be made without any discussion;
  8. Terminate negotiations with a selected Proposer and select the next most responsive Proposer, or take such other action as deemed appropriate if negotiations fail to result in a signed contract within a reasonable time of the commencement of negotiations as determined by the Commissioner;
  9. Postpone or cancel this RFP, in whole or in part, and to reject all proposals.

E. Contractual Requirements

1. Any firm awarded a contract as a result of this RFP will be required to sign the City's standard contract for such services. A sample draft copy of the contract is attached for your information. The requirements for performance of this Project, as well as insurance, payment terms and all other provisions are contained in the contract.
2. Any information which may have been released either orally or in writing prior to the issuance of the RFP shall be deemed preliminary in nature and bind neither the City nor the Proposer.
3. The City will deal only with the Consultant and the City has no financial obligation to sub-consultants and sub-contractors. However, all sub-consultants and sub-contractors are subject to the City's contracting requirements including Equal Employment Opportunity (Executive Order #50 of 1980 as revised).
4. If this is an Infrastructure contract for engineering design services, the Proposer must negotiate with the agency the adoption of a schedule of payments and deliverables. In the event that a satisfactory decision cannot be reached regarding those schedules, the agency reserves the right to award to another proposer.
5. The prompt Payment provisions set forth in the edition of the Procurement Policy Board Rules in effect at the time of this solicitation shall be applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to contractors of interest payments made after the required payment date except as set forth in the Rules.

The contractor (consultant) must submit a proper invoice to receive payment, except where the contract provides that the contractor shall be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

Determinations of interest due shall be made in accordance with the provisions of the Procurement Policy Board Rules and General Municipal Law 3-a.

6. The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, 10<sup>th</sup> Floor, New York, NY 10007; the telephone number is (212) 669-2323. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

7. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provision of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by accessing the City's website at [nyc.gov/ppb](http://nyc.gov/ppb).
8. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Charge and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to Local Based Enterprises program and its implementation rules.
9. Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal agency non-responsiveness determinations and agency non-responsibility determinations and to protest an agency's determination regarding the solicitation or award of a contract.
10. Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.
11. The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not directly result in the displacement of any New York City employee.

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ACCO Signature

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Date

**ATTACHMENT 1**

**STATEMENT OF UNDERSTANDING**

By signing in the space provided below, the undersigned certifies that the respondent (i) has read and understands the scope and requirements of this project, as described in the RFP and all attachments; (ii) has the capacity to execute this project, (iii) agrees to accept payment in accordance with the requirements of this RFP and the standard design contract, attached hereto, and (iv) will, if its proposal is accepted, enter into the attached Standard design contract with the New York City Department of Design and Construction.

I hereby certify that my firm will carry all insurances specified in the contract.

The undersigned further stipulates that the information in this Proposal is, to the best of knowledge, true and accurate.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Consultant Firm

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Federal Tax I.D.

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
Address

**ATTACHMENT 2**

**TECHNICAL PROPOSAL FORMS**

**A. FORM FOR IDENTIFICATION OF SUBCONSULTANTS  
 (include this form with the Technical Proposal)**

As set forth in Section IV (B)(2a) of the RFP, the Proposer must identify by name the specific Subconsultants the proposer intends to use to perform the required services. Specifically, identify the Subconsultants for the services set forth below. If for any of the areas set forth below, the Proposer intends to perform the services with its own employees, so indicate by inserting the words "In House".

| <b><u>Discipline</u></b> | <b><u>Firm Name</u></b> |
|--------------------------|-------------------------|
| _____                    | _____                   |
| _____                    | _____                   |
| _____                    | _____                   |
| _____                    | _____                   |
| _____                    | _____                   |
| _____                    | _____                   |

**B. FORM FOR IDENTIFICATION OF KEY PERSONNEL  
 (include this form with the Technical Proposal)**

As set forth in Section IV (B)(2) of the RFP, identify by name the individuals who will perform the required services for the titles of Key Personnel set forth below and provide information demonstrating their qualifications. After selection of the Consultant, the qualification information provided by the Proposer on this form will be included in Exhibit E to the attached contract.

**JOCS PERSONNEL**

| <b>TITLE</b>      | <b>NAME</b> | <b>Number of Years<br/>of Experience</b> | <b>Professional License<br/>or Certification</b> |
|-------------------|-------------|--|--|
| Project Executive | _____       | _____                                    | _____  |
| Project Manager   | _____       | _____                                    | _____  |

**ATTACHMENT 3**

**FEE PROPOSAL FORM**

The proposer shall submit a separate sealed envelope containing the Fee Proposal. A form for the submission of the Fee Proposal is set forth below.

1. Percentages: For the dollar amounts of construction work designated below, the Respondent shall propose a percentage to be utilized in determining its fee.

| <u>Dollar Amount of Construction<br/>Work Performed</u> | <u>Consultant's Fee</u> |
|---|-------------------------|
| a. \$20,000,000<br>(first year of contract term)        | _____                   |
| b. Up to \$20,000,000<br>(second year of contract term) | _____                   |
| c. Up to \$20,000,000<br>(third year of contract term)  | _____                   |

2. Maximum Fee Payable: The Respondent shall propose a maximum fee payable, which shall be the total of the following: (i) the percent indicated in item a. above times \$20,000,000; (ii) the percent indicated in item b. above times \$20,000,000; and (iii) the percent indicated in item c. above times \$20,000,000.

**Maximum Fee Payable:**     \$ \_\_\_\_\_

\_\_\_\_\_  
Name of Principal (please print)

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Date

**ATTACHMENT 4**

**ACKNOWLEDGEMENT OF ADDENDA**

|  |               |
|--|---------------|
| <b>TITLE OF THE REQUEST FOR PROPOSALS:</b> | <b>PIN #:</b> |
|--|---------------|

**Instructions: The proposer is to complete Part I or Part II of this form, whichever is applicable, and sign and date this form. This form serves as the proposer's acknowledgement of the receipt of Addenda to this Request for Proposals (RFP) which may have been issued by the Agency prior to the Proposal Due Date and Time.**

     Part I

Listed below are the dates of issue for each Addendum received in connection with this RFP.

- Addendum # 1, dated \_\_\_\_\_
- Addendum # 2, dated \_\_\_\_\_
- Addendum # 3, dated \_\_\_\_\_
- Addendum # 4, dated \_\_\_\_\_
- Addendum # 5, dated \_\_\_\_\_
- Addendum # 6, dated \_\_\_\_\_
- Addendum # 7, dated \_\_\_\_\_
- Addendum # 8, dated \_\_\_\_\_
- Addendum # 9, dated \_\_\_\_\_
- Addendum #10, dated \_\_\_\_\_

     Part II

No Addendum was received in connection with this RFP.

Proposer Name

**Proposer's Authorized Representative:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT 5**

**CONFIRMATION OF VENDEX COMPLIANCE**

The Proposer shall submit this Confirmation of Vendex Compliance

Name of Proposer: \_\_\_\_\_

Proposer's Address: \_\_\_\_\_

Proposer's Telephone Number: \_\_\_\_\_

Proposer's Fax Number: \_\_\_\_\_

Date of Proposal Submission: \_\_\_\_\_

Project ID: \_\_\_\_\_

**Vendex Compliance:** To demonstrate compliance with Vendex requirements, the Proposer shall complete either Section (1) or Section (2) below, whichever applies.

(1) **Submission of Questionnaires to MOCS:** By signing in the space provided below, the Proposer certifies that as of the date specified below, the Proposer has submitted Vendex Questionnaires to the Mayor's Office of Contract Services, Attn: VENDEX, 253 Broadway, 9th Floor, New York, New York 10007.

Date of Submission: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Partner or corporate officer)

Print Name: \_\_\_\_\_

(2) **Submission of Certification of No Change to DDC:** By signing in the space provided below, the Proposer certifies that it has read the instructions in a "Vendor's Guide to Vendex" and that such instructions do not require the Proposer to submit Vendex Questionnaires. The Proposer has completed **TWO ORIGINALS** of the Certification of No Change.

By: \_\_\_\_\_  
(Signature of Partner or corporate officer)

Print Name: \_\_\_\_\_

**THE CITY OF NEW YORK**  
**DEPARTMENT OF DESIGN AND CONSTRUCTION**  
**DIVISION OF STRUCTURES**  
**30-30 THOMSON AVENUE**  
**LONG ISLAND CITY, NEW YORK NEW YORK 11101**  
**CONTRACT FOR CONSULTANT SERVICES**  
**FOR JOB ORDER CONTRACTING SYSTEM**

**CAPIS ID NUMBER:** JOCS-DDC

**REGISTRATION NUMBER:** \_\_\_\_\_

**PIN NUMBER:** 8502007VP0001P

**CONSULTANT:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone:** \_\_\_\_\_  
**Facsimile:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Professional Services Contract**  
**For JOC System**  
**September 2006**



hereunder and agrees to deliver the same to the City free from any claims, liens or charges, and agrees further that neither it nor any person, firm or corporation shall have the right to a lien thereon.

4.2 The Consultant shall be liable to and hereby agrees to defend, indemnify and hold harmless the City against all claims against the City for infringement of any copyright or patent rights of systems, materials, documentation or software furnished by the Consultant in the performance of this Contract.

**Article 5 Term of Contract**

5.1 Term of Contract: This Contract shall commence as of the date of the advice of award and shall remain in effect for the period set forth in Exhibit A.

5.2 Extension of Contract: The Commissioner may, for good and sufficient cause, extend the term of this Contract for a cumulative period not to exceed one year from the date of expiration.

5.3 Renewal of Contract: At the Commissioner's sole option, the term of this contract may be renewed for the period and for the increased amount set forth in Exhibit A.

5.4 Impact on Fees: In the event the term of the Contract is extended and/or renewed, the fee for the third year, as set forth in Article 6.3 below, shall remain in full force and effect during such extension and/or renewal of the contract term.

**Article 6 Terms and Conditions of Payment**

6.1 Total Payments: Total payments for all services performed pursuant to this Contract shall not exceed the sum set forth in Exhibit A.

6.2 Executory Only: This Contract shall be deemed executory only to the extent of the moneys appropriated and available for the purpose of the Contract and no liability or account thereof shall be incurred beyond the amount of such moneys. It is therefore understood that neither this Contract nor any representations by any public employee or offer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of this Contract.

6.3 Consultant's Fee: For the satisfactory performance of all required services hereunder, the Consultant shall be paid a fee, the amount of which shall be calculated as a percentage of the dollar amount of task orders utilizing the JOC System which are registered by the Comptroller of the City of New York during the term of this Contract. The Consultant's fee shall be calculated in accordance with the applicable percentage per year set forth below. Such fee shall be subject to the limitation set forth in Article 6.4.

| <u>Year</u> | <u>Dollar Amount of Task Orders Registered</u> | <u>Consultant's Fee</u> |
|-------------|--|-------------------------|
| 1           | Up to \$20,000,000                             | _____ %                 |
| 2           | Up to \$20,000,000                             | _____ %                 |
| 3           | Up to \$20,000,000                             | _____ %                 |

6.4 Maximum Annual Fee: For each year of the term of this Contract, including any extension and/or renewal thereof, the maximum fee payable hereunder for the Consultant's services shall be the amount determined by applying the percentage specified above for the year in question to a registered task order amount of \$20,000,000. In the event that for any given year, the total dollar amount of task orders registered utilizing the JOC System exceeds \$20,000,000, the Consultant shall continue to perform all required services hereunder, but shall not be entitled to any additional compensation.

6.5 Partial Payments: Partial payments of the Consultant's fee shall be made once the Comptroller of the City of New York has registered a task order issued to a JOC System contractor. DDC shall issue a separate task order to the Consultant specifying the amount of fee to which it is entitled.

6.6 Fee for Extension or Renewal Term: In the event the term of the Contract is extended and/or renewed, the fee for the third year, as set forth in Article 6.3 above, shall remain in full force and effect during such extension and/or renewal of the contract term.

6.7 The Consultant shall not be entitled to additional compensation as a result of any sum paid to JOC construction contractors in settlement of claims for additional compensation.

**Article 7 Consultant's Personnel**

7.1 Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide personnel for the performance of all required services hereunder. The Consultant shall provide such personnel through its own employees, unless otherwise approved by the Commissioner. The Consultant specifically agrees that its employees and agents shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

7.2 Key Personnel: It is the intent of the City to secure the personal services of the key personnel identified in Exhibit A. Accordingly, the Consultant agrees to assign such key personnel throughout the term of the Contract. The Consultant agrees not to remove and replace such key personnel, unless the proposed replacement has received the prior written approval of the Commissioner.

7.3 At the Commissioner's request at any time, the Consultant agrees to remove any personnel and substitute another employee of the Consultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his sole and absolute discretion.

IN WITNESS WHEREOF, the Commissioner, on behalf of the City of New York, and the Consultant have executed this Contract in quadruplicate, two of which are to remain with the Commissioner, another to be filed with the Comptroller of the City, and the fourth to be delivered to the Consultant.

CITY OF NEW YORK:

By: \_\_\_\_\_

Title: \_\_\_\_\_

CONSULTANT:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

EIN: \_\_\_\_\_

Approved as to Form and Certified  
as to Legal Authority

\_\_\_\_\_  
Acting Corporation Counsel

Date: \_\_\_\_\_

ACKNOWLEDGMENT BY CORPORATION

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me personally came \_\_\_\_\_, who being by me duly sworn, did depose and say that he/she resides in the City of \_\_\_\_\_ that he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me personally came \_\_\_\_\_, to me known and known to me to be the Deputy Commissioner of the Department of Design and Construction of The City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Deputy Commissioner for the purposes therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds



**Exhibit B**  
**Specific Requirements**  
**Consultant Services for Job Order Contracting System**

**I. General**

The Consultant shall provide the Department of Design and Construction (“DDC”) with all services necessary and required to update, maintain and implement a Job Order Contracting System (“JOC System”). The JOC System is a system for the procurement and implementation of requirements contracts that enables DDC to accomplish a large number of small and medium sized construction projects with a limited number of competitively bid contracts.

The JOC System utilizes three documents. The first is a Unit Price Book, which contains a comprehensive listing of construction tasks with corresponding all inclusive unit prices for all specified tasks. The second document is a set of performance based Technical Specifications. The third document contains contractual information and consists of the bid documents, agreement and general conditions. The Unit Price Book and Technical Specifications were originally prepared in August of 1996 by the Gordian Group, a consultant previously engaged by DDC. The most recent version of these documents is dated March, 2000. DDC anticipates that a further revision will be completed in May of 2001.

Contractors bid an adjustment factor to the all inclusive unit prices set forth in the Unit Price Book. The total price for a specific project is determined as follows: the unit prices for the required items, multiplied by the quantity of such items required, multiplied by the adjustment factor.

The JOC System currently utilizes PROGEN, a Windows based software application. PROGEN is a proprietary software application for which DDC has a perpetual, non-exclusive license.

**II. Consultant Services:** The Consultant shall provide the services specified in Sections A through E below.

**A. Deliverables for the JOC System:** The Consultant shall prepare and submit the deliverables for the JOC System described below. Such deliverables shall be submitted within six (6) months of the date of the advice of award. All deliverables are subject to review and approval by the Commissioner.

1. Unit Price Book

(a) Updating of Unit Price Book: The Consultant shall update the most recent version of the existing Unit Price Book. The existing Unit Price Book consists of two volumes and contains a comprehensive listing of approximately 75,000 construction tasks and related work items necessary for projects involving alteration, renovation, rehabilitation and/ or minor new construction. The existing Unit Price Book consists of two volumes and is organized into sections for the following trades: (i) general construction; (ii) plumbing; (iii) heating, ventilating and air-conditioning, and (iv) electrical. Each construction task specified in the Unit Price Book includes a task description, a unit of measurement, an estimated quantity and an all-inclusive unit price. Each all-inclusive unit price contains fully developed costs for the performance of the construction task specified, including without limitation, the costs specified below. Such costs reflect prices in the five boroughs of New York City:

- (1) Cost of material, including without limitation, transportation to the site and sales and personal property taxes, if required
- (2) Cost of labor, including without limitation, (i) prevailing wages and supplemental benefits for all required labor classifications in accordance with the Schedule of Prevailing Wages and Benefits promulgated pursuant to Section 220 of the New York State Labor Law, and (ii) all payments mandated by law in connection with labor, including without limitation, Social Security and Medicare taxes, and Worker’s Compensation and Unemployment insurance
- (3) Cost of equipment and small tools, including without limitation, maintenance, operation,

- (4) installation and dismantling of equipment and transportation to and from the site
  - (5) Cost of all general conditions, including without limitation clean-up
  - (6) Cost of compliance with all federal, state and local laws, rules and regulations applicable to the work
  - (7) Cost of obtaining all required permits and approvals for the work
  - (8) Cost of coordination with other multiple prime contractors
- (b) Preparation of New Unit Items: As directed by DDC, the Consultant shall prepare new unit items and corresponding all inclusive unit prices for inclusion in the Unit Price Book. Preparation of all such unit items and prices shall be in accordance with the criteria set forth above.
- 2. Technical Specifications
  - (a) Updating of Technical Specifications: The Consultant shall revise and/or update the existing Technical Specifications for all construction tasks contained in the Unit Price Book. For all listed construction tasks, the Technical Specifications establish the quality of workmanship; describe the materials required, and specify any general and/or special conditions applicable to the work to be performed. The Technical Specifications have been prepared in accordance with the CSI (Construction Specification Institute) format. Such Technical Specifications list all federal, state and local laws, rules and regulations applicable to the work, and include necessary references to applicable documents and manuals, including without limitation the following:
    - (1) National Electrical Code
    - (2) ASTM Standard Specifications
    - (3) Federal Specifications
    - (4) ASHRAE
    - (5) ACI
    - (6) ANSI
    - (7) NFPA
    - (8) NRCA
    - (9) AWPA
    - (10) NEMA
    - (11) Underwriter's Laboratories, Inc.
  - (b) Preparation of New Technical Specifications: For all new units items the Consultant is directed to provide, the Consultant shall prepare technical specifications for such items in accordance with the criteria set forth above.
- 3. Contract Documents: The Consultant shall prepare a complete set of bid and contract documents for the implementation of the JOC System. Once the bid and contract documents are finalized and approved by the Commissioner, the Consultant shall prepare four separate sets of such documents for the following trades: (i) general construction; (ii) plumbing; (iii) heating, ventilating and air-conditioning, and (iv) electrical. In preparing such bid and contract documents, the Consultant shall coordinate with DDC legal, procurement and contracting personnel.

**B. Software for JOC System Project Management**

- 1. General: The Consultant shall be responsible for the updating and maintenance of the existing software, PROGEN, to manage the JOC System. In the alternative, the Consultant shall be responsible for providing, updating and maintaining substitute software to manage the JOC System. The Consultant shall install, test and maintain whichever software is used, either the existing or the substitute, on both the City's and the JOC contractors' hardware systems. There shall be no limit on the number of installations of the software.
- 2. Existing Software: The existing software, PROGEN, is capable of generating the items set forth

below. DDC has a perpetual, non-exclusive license to use the PROGEN software.

- (a) all contract documents in connection with implementing the JOC System, including without limitation, contractor cost proposals, cost estimates, initial and final task orders, and project documentation
  - (b) management reports and forms
  - (c) project specific and general program executive summary reports
  - (d) verification of contractor cost proposals
3. Substitute Software: Substitute software provided by the Consultant is subject to approval by DDC and must comply with the requirements set forth below. The Consultant shall maintain the existing software, PROGEN, until the substitute software is approved by DDC. The transition from PROGEN to the substitute software shall not cause any disruption in the JOC System.
- (a) Such software must be capable of generating the items set forth in Paragraph (2) above.
  - (b) Such software must be 2000 compliant, net workable, and capable of running on Windows 95, Windows NT, Windows 3.1, Windows ME and Office 2000.
  - (c) Such software must be fully tested and debugged under actual field conditions prior to the implementation.
  - (d) Such software shall be accompanied by all user documentation.
  - (e) Such software shall be accompanied by a written perpetual license for DDC use.

### **C. Consulting Services**

The Consultant shall provide consulting services with respect to all aspects of the JOC System, as set forth below:

1. provide complete procurement support as required for the implementation of the JOC System, including without limitation, conducting pre-bid meetings with prospective JOC contractors and responding to inquiries from contractors and DDC personnel,
2. make presentations regarding the JOC System as required to contractor associations such as the General Contractors Association, the New York Building Congress, the Subcontractor Trade Association, etc.
3. attend meetings with DDC personnel as required
4. monitor the overall program and provide status reports as required

### **D. Training Services**

The Consultant shall develop a comprehensive JOC System training program which shall include different course modules to enable all DDC project managers, project directors and cost verification personnel, as well as JOC contractors, to receive specialized training. The goal of the training program is to allow DDC personnel and JOC contractors to acquire a proficiency in JOC System methodology and skills in the use of all necessary tools, including proposal development software. Specific services to be provided by the Consultant shall include without limitation the items set forth below:

1. The Consultant shall develop a "hands on" training program based on approved City policies and procedures. Training will include development and production of a comprehensive training and reference manual with sample work order letters, flow charts and forms. The training courses will include practical exercises which shall be based on actual City projects. Training will incorporate all the activities necessary to give City personnel and JOC contractors the expertise to implement and manage the JOC program.
2. The Consultant shall conduct as many training courses as the Commissioner may require in order to ensure that City staff and JOC contractors are fully prepared to properly execute the JOC System and to utilize proposal development software. The training courses provided by the Consultant

shall include without limitation the following:

- (a) conduct classroom procedural and software training for new DDC and contractor personnel
  - (b) provide hands-on training for new DDC and contractor personnel
  - (c) conduct refresher course training for existing DDC and contractor personnel
  - (d) conduct training courses for modified procedures
  - (e) conduct specialized training courses to address problem areas
  - (f) provide on-site software assistance to DDC project managers and contractors
  - (g) provide on-site systems support in connection with software
  - (h) provide procedural assistance to DDC and contractors for various projects
  - (i) set up software access for DDC management, personnel and contractors
  - (j) provide software overview
  - (k) provide customized reports utilizing software for review by DDC management
  - (l) monitor the proper use of the software shared data base
3. The Consultant shall develop and produce all training aids and material necessary to support the JOC System training courses, including without limitation comprehensive training manuals with sample work order letters, flow charts and forms, as well as full software documentation and applicable training manuals.

#### **E. On-Going Technical Support and Maintenance**

The Consultant shall provide continuous on-going technical support and maintenance, including without limitation, the items set forth below:

1. Updating construction tasks, unit prices, technical specifications, execution procedures and training materials. In addition, the Consultant shall develop new unit prices and technical specifications for new construction tasks identified throughout the Contract term.
2. Providing newly updated documents to the City upon request
3. Troubleshooting, maintenance, monitoring and updating of the entire JOC System to ensure optimal performance
4. Providing updated versions of the Software, as well as installing, testing and debugging the Software on all DDC and JOC contractor computers
5. Providing continuous telephone support to the City, including debugging and other system related support
6. Conduct periodic training sessions for new employees

#### **III. Miscellaneous**

The Consultant, or any firm determined by the Commissioner to be related to or affiliated with the Consultant, shall be precluded from bidding on the JOC contracts.

**EXHIBIT C**  
**GENERAL PROVISIONS GOVERNING CONTRACTS FOR**  
**CONSULTANTS, PROFESSIONAL AND TECHNICAL SERVICES**

ARTICLE 1. DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning set forth below:

- 1.1 "City" shall mean the City of New York, its departments and political subdivisions.
- 1.2 "Comptroller" shall mean the Comptroller of the City of New York.
- 1.3 "Department" shall mean the Department of Design and Construction.
- 1.4 "Commissioner" or "Administrator" shall mean the Commissioner of the Department of Design and Construction, or his duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his/her authority.
- 1.5 "Law" or "Laws" shall include but not be limited to the New York City Charter, the New York City Administrative Code, a local law of the City of New York, and any ordinance, rule or regulation having the force of law.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 PROCUREMENT OF AGREEMENT

- A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.
- B. For a breach or violation of such representations or warranties, the Administrator shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

2.2 CONFLICT OF INTEREST: The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to the Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

2.3 FAIR PRACTICES: The Contractor and each person signing on behalf of any contractor represents and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

- A. The prices in this contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- B. Unless otherwise required by law, the prices which have been quoted in this contract and on the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor; and
- C. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of the above.

### ARTICLE 3. AUDIT BY THE DEPARTMENT AND CITY

- 3.1 All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.
- 3.2 The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by said Department and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department and to the Comptroller as they consider necessary.
- 3.3 All books, vouchers, records, reports, canceled checks and any and all similar material may be subject to periodic inspection, review and audit by the State of New York, Federal Government and other persons duly authorized by the City. Such audit may include examination and review of the source and application of all funds whether from the City, any State, the Federal Government, private sources or otherwise.
- 3.4 The contractor shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

### ARTICLE 4. COVENANTS OF THE CONTRACTOR

#### 4.1 EMPLOYEES

- A. All experts or consultants or employees of the Contractor who are employed by the Contractor to perform work under this contract are neither employees of the City nor under contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Agreement. Nothing in this contract shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, worker's compensation, disability benefits and social security, or, except as specifically stated in this contract, to any person, firm, or corporation.
- B. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damage to any property sustained during its operations and

work on the project under this agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the Contractor or not.

- C. Worker's Compensation and Disability Benefits: If this Agreement be of such a character that the employees engaged thereon are required to be insured by the provisions of Chapter 615 of the Laws of 1922, known as the "Worker's Compensation Law" and acts amendatory thereto, the Agreement shall be void and of no effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Agreement such employees in compliance with the provisions of said law, inclusive of Disability Benefits; and, shall furnish the Department with two (2) certificates of these insurance coverages.
- D. Unemployment Insurance: Unemployment Insurance coverage shall be obtained and provided by the Contractor for its employees.
- E. Minimum Wage: Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

4.2 INDEPENDENT CONTRACTOR STATUS: The Contractor and the Department agree that the Contractor is an independent contractor, and not an employee of the Department or the City of New York, and that in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City of New York, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City of New York, including, but not limited to, Worker's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

#### 4.3 INSURANCE

- A. The Contractor shall carry paid up insurance in the sum of not less than One Million (\$1,000,000) Dollars per occurrence to protect the Department and the City of New York against any and all claims, loss or damage, whether in contract or tort, including claims for injuries to, or death of persons, or damage to property, whether such injuries, death or damages be attributable to the negligence or any other acts of the Contractor, its employees, or otherwise. Such policy or policies of insurance shall be obtained from a company, or companies, duly licensed to do business in the State of New York and shall name the Department and the City of New York as parties insured thereunder, and shall provide that in event of cancellation thereof the Department shall be notified at least fifteen days in advance thereof. Two (2) certificates of insurance shall be delivered to the Department for approval as to form prior to the effective date of this contract.
- B. In the event that any claim is made or any action is brought against the City arising out of negligent or careless acts of an employee of the Contractor, either within or without the scope of his employment, or arising out of Contractor's negligent performance of this Agreement, then the City shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action. The rights and remedies of the City provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

4.4 PROTECTION OF CITY PROPERTY

- A. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement; and caused, either directly or indirectly, by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Contractor as expert, consultant, specialist or subcontractor hereunder.
- B. In the event that any such City property is lost or damaged, except for normal wear and tear, then the City shall have the right to withhold further payments hereunder for the purpose of set-off, in sufficient sums to cover such loss or damage.
- C. The Contractor agrees to indemnify the City and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any such City property described in subsection A above.
- D. The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

4.5 CONFIDENTIALITY: All of the reports, information or data, furnished to or prepared, assembled or used by the Contractor under this Agreement are to be held confidential, and prior to publication, the Contractor agrees that the same shall not be made available to any individual or organization without the prior written approval of the Department.

4.6 BOOKS AND RECORDS: The Contractor agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

4.7 RETENTION OF RECORDS: The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for six years after the final payment or termination of this Agreement, whichever is later. City, State and Federal auditors and any other persons duly authorized by the Department shall have full access to and the right to examine any of said materials during said period.

4.8 COMPLIANCE WITH LAW: Contractor shall render all services under this Agreement in accordance with the applicable provisions of federal, state and local laws, rules and regulations as are in effect at the time such services are rendered.

4.9 INVESTIGATION CLAUSE

- A. The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.

1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City,

or any public benefit corporation organized under the laws of the State of New York, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City then;

3. The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon no less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

4. If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 26.3 below without the City incurring any penalty or damages for delay or otherwise.

B. The penalties which may attach a final determination by the Commissioner or agency head may include but shall not exceed:

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

C. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate;

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (B) above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (A)(3) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

D. Definitions Used in this Article

1. The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

2. The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

4. The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

E. In addition to and notwithstanding any other provision of this agreement the Commissioner or Agency Head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event consultant fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the consultant, or affecting the performance of this contract.

4.10 ASSIGNMENT

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this contract, unless the prior written consent of the Administrator shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

B. Failure of the Contractor to obtain any required consent to any assignment, shall be cause for termination for cause, at the option of the Administrator; and if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the contract shall be forfeited to the City, except so much thereof as may be necessary to pay the Contractor's employees.

C. The provisions of this clause shall not hinder, prevent or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.

D. This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

4.11 SUBCONTRACTING

- A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior written approval of the Department. Two copies of each such proposed subcontract shall be submitted to the Department with the Contractor's written request for approval. All such subcontracts shall contain provisions specifying:
  - 1. that the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Department and the Contractor,
  - 2. that nothing contained in such agreement shall impair the rights of the Department,
  - 3. that nothing contained herein, or under the Agreement between the Department and the Contractor, shall create any contractual relation between the subcontractor and the Department, and
  - 4. that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Department and the Contractor.
- B. The Contractor agrees that it is fully responsible to the Department for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.
- C. The aforesaid approval is required in all cases other than individual employer-employee contracts.
- D. The Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.

#### 4.12 PUBLICITY

- A. The prior written approval of the Department is required before the Contractor or any of its employees, servants, agents, or independent contractors may, at any time, either during or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement.
- B. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Department shall have a royalty fee, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

#### 4.13 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Contractor or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void this contract.
- C. The Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

4.14 INVENTIONS, PATENTS AND COPYRIGHTS

- A. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- B. No report, document or other data produced in whole or in part with contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the contract.
- C. In no case shall subsections A and B of this section apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

4.15 INFRINGEMENTS: The Contractor shall be liable to the Department and hereby agrees to indemnify and hold the Department harmless for any damage or loss or expense sustained by the Department from any infringement by the Contractor of any copyright, trademark or patent rights of designs, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement.

4.16 ANTI-TRUST: The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular goods or services purchased or procured by the City under this Agreement.

ARTICLE 5. TERMINATION

5.1 TERMINATION OF AGREEMENT

- A. The Department and/or City shall have the right to terminate this Agreement, in whole or in part:
  - 1. Under any right to terminate as specified in any section of this Agreement.
  - 2. Upon the failure of the Contractor to comply with any of the terms and conditions of this Agreement.
  - 3. Upon the Contractor's becoming insolvent.
  - 4. Upon the commencement under the Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily.
  - 5. Upon the Commissioner's determination, termination is in the best interest of the City.
- B. The Department or City shall give the Contractor written notice of any termination of this Agreement specifying therein the applicable provisions of subsection A of this section and the effective date thereof which shall not be less than ten (10) days from the date the notice is received.
- C. The Contractor shall be entitled to apply to the Department to have this Agreement terminated by said Department by reason of any failure in the performance of this Agreement (including any failure by the Contractor to make progress in the prosecution of work hereunder which endangers such performance), if such failure arises out of causes beyond the control and without the fault or

negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; or any other cause beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Department which agrees to exercise reasonable judgment therein. If such a determination is made and the Agreement terminated by the Department pursuant to such application by the Contractor, such termination shall be deemed to be without cause.

- D. Upon termination of this Agreement the Contractor shall comply with the Department or City close-out procedures, including but not limited to:
1. Accounting for and refund to the Department or City, within thirty (30) days, any unexpended funds which have been paid to the Contractor pursuant to this Agreement.
  2. Furnishing within thirty (30) days an inventory to the Department or City of all equipment, appurtenances and property purchased through or provided under this Agreement carrying out any Department or City directive concerning the disposition thereof.
  3. Not incurring or paying any further obligation pursuant to this Agreement beyond the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after such date shall be paid by the Department or City in accordance with the terms of this Agreement. In no event shall the word "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.
  4. Turn over to the Department or City or its designees all books, records, documents and material specifically relating to this Agreement.
  5. Submit, within ninety (90) days, a final statement and report relating to this Agreement. This report shall be made by a certified public accountant or a licensed public accountant.
- E. In the event the Department or City shall terminate this Agreement, in whole or in part, as provided in paragraphs 1, 2, 3 or 4 of subsection A of this section, the Department or City may procure, upon such terms and in such manner as deemed appropriate, services similar to these so terminated, and the Contractor shall continue the performance of this Agreement to the extent not terminated hereby.
- F. Notwithstanding any other provisions of this contract, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of Contractor's breach of the contract, and the City may withhold payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from the Contractor is determined.
- G. The provisions of the Agreement regarding confidentiality of information shall remain in full force and effect following any termination.
- H. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Agreement.

#### ARTICLE 6. MISCELLANEOUS

- 6.1 CONFLICT OF LAWS: All disputes arising out of this Agreement shall be interpreted and decided in accordance with the laws of the State of New York.
- 6.2 GENERAL RELEASE: The acceptance by the Contractor or its assignees of the final payment under this

contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the City from any and all claims of and liability to the Contractor arising out of the performance of this contract.

6.3 CLAIMS AND ACTIONS THEREON

- A. No action at law or proceeding in equity against the City or Department shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.
- B. No action shall lie or be maintained against the City by Contractor upon any claims based upon this Agreement unless such action shall be commenced within six (6) months after the date of filing in the Office of the Comptroller of the City of the voucher for the final payment hereunder, or within six (6) months of the termination or conclusion of this Agreement, or within six (6) months after the accrual of the Cause of Action, whichever first occurs.
- C. In the event any claim is made or any action brought in any way relating to the Agreement herein, the Contractor shall diligently render to the Department and/or the City of New York without additional compensation any and all assistance which the Department and/or City of New York may require of the Contractor.
- D. The Contractor shall report to the Department in writing within three (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES: No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this contract.

6.5 WAIVER: Waiver by the Department of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the Department or City as required and attached to the original Agreement.

6.6 NOTICE: The Contractor and the Department hereby designate the business addresses hereinabove specified as the places where all notices, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified mail shall be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice, direction or communication is received by the party. Such address may be changed at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified above. Nothing in this section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by law, including the Civil Practice Law and Rules.

6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED: It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision, is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

6.8 SEVERABILITY: If this Agreement contains any unlawful provision not an essential part of the Agreement

and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

- 6.9 POLITICAL ACTIVITY: There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.
- 6.10 MODIFICATION: This Agreement may be modified by the parties in writing in a manner not materially affecting the substance hereof. It may not be altered or modified orally.
- 6.11 PARAGRAPH HEADINGS: Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this contract.
- 6.12 NO REMOVAL OF RECORDS FROM PREMISES: Where performance of this Agreement involves use by the Contractor of Departmental papers, files, data or records at Departmental facilities or offices, the Contractor shall not remove any such papers, files, data or records, therefrom without the prior approval of the Department's designated official.
- 6.13 INSPECTION AT SITE: The Department shall have the right to have representatives of the Department or of the City or of the State or Federal governments present at the site of the engagement to observe the work being performed.

#### ARTICLE 7. MERGER

This written Agreement contains all terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE 8. CONDITIONS PRECEDENT: This contract shall neither be binding nor effective unless:

- A. Approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975, in the event the Executive Order requires such approval; and
- B. Certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan; and
- C. Approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act"), in the event regulations of the Board pursuant to the Act require such approval.
- D. It has been authorized by the Mayor and the Comptroller shall have endorsed his or her certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of carrying out this agreement.

The requirements of this section of the contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this contract to be effective and for the expenditure of City funds.

#### ARTICLE 9. PROCUREMENT POLICY BOARD RULES

This contract is subject to the Rules of the Procurement Policy Board of the City of New York effective August 1, 1990. In the event of a conflict between said Rules and a provision of this contract, the Rules shall take precedence.

#### ARTICLE 10. STATE LABOR LAW AND CITY ADMINISTRATIVE CODE

- 1. As required by New York State Labor Law §220-e:

- (a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- (b) That neither the Contractor, Subcontractor, nor any person on his behalf shall, in any manner discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin;
- (c) That there may be deducted from the amount payable to the Contractor by the City under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this contract; and
- (d) That this contract may be canceled or terminated by the City and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

2. As required by New York City Administrative Code §6-108:

- (a) It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
- (b) It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
- (c) Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this contract.
- (d) Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

**ARTICLE 11. FORUM PROVISION:** Choice of Law, Consent to Jurisdiction and Venue

This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York. The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Contractor agrees:

- (a) If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this

Contract, or to such other address as the Contractor may provide to the City in writing; and

- (b) With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.
- (c) With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
- (d) If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

## ARTICLE 12. EQUAL EMPLOYMENT OPPORTUNITY

12.1 This contract is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O.50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the Contractor agrees that:

12.1.1 The Contractor will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

12.1.2 When it subcontracts, the Contractor will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status;

12.1.3 The Contractor will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship, or that it is an equal employment opportunity employer;

12.1.4 The Contractor will send to each labor organization or representative or workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E. O. 50 and the rules and regulations promulgated thereunder; and

12.1.5 The Contractor will furnish all information and reports including an Employment Report before the award of the contract which are required by E. O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Office of Labor Services ("DLS"), and will permit access to its books, records and accounts by DLS for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

12.2 The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with the E. O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the imposition by the Commissioner of any or all of

the following sanctions:

- 12.2.1 disapproval of the Contractor;
- 12.2.2 suspension or termination of the contract;
- 12.2.3 declaring the Contractor in default; or
- 12.2.4 in lieu of any of the foregoing sanctions, the Director may impose an employment program.

12.3 The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000.00 to which it becomes a party, unless exempted by E. O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance.

12.4 The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to E. O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E. O. 50 and the rules and regulations promulgated thereunder.

### ARTICLE 13. RESOLUTION OF DISPUTES

1. Except as provided in 1(a) and 1(b) below, all disputes between the City and the vendor that arise under, or by virtue of, this contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board (“PPB Rules”). This procedure shall be the exclusive means of resolving any such disputes.

- (a) This section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.
- (b) For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the vendor’s work to the contract, and the acceptability and quality of the vendor’s work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the vendor disagrees.

2. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.

3. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the vendor shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer (“ACCO”) or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of any and all claims being presented pursuant to this section and a material breach of contract.

4. Presentation of Dispute to Agency Head.

- (a) Notice of Dispute and Agency Response. The vendor shall present its dispute in writing (“Notice of Dispute”) to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the vendor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by

the vendor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the vendor to produce any requested material whose relevancy the vendor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the vendor of its claim.

- (b) **Agency Head Inquiry.** The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the vendor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other vendor with a contract related to the work of this contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the vendor initiating the dispute.
  - (c) **Agency Head Determination.** Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the vendor and ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.
  - (d) **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the vendor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the vendor and more favorable to the City than the decision of the Agency Head.
5. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the vendor to the CDRB, the vendor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
- (a) **Time, Form, and Content of Notice.** Within thirty (30) days of receipt of a decision by the Agency Head, the vendor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the vendor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head, and (iii) a copy of all materials submitted by the vendor to the agency, including the Notice of Dispute. The vendor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
  - (b) **Agency Response.** Within thirty (30) days of receipt of the Notice of Claim, the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
  - (c) **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such

investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the vendor. Willful failure of the vendor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the vendor of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, agency representatives, and any other personnel desired by the Comptroller.

- (d) Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the vendor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The vendor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

6. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

- (a) the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;
- (b) the City Chief Procurement Officer ("CCPO") or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated, and
- (c) a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

7. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the vendor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

- (a) Form and Content of Petition by Vendor. The vendor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the vendor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the vendor to the agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the vendor to, the Comptroller's Office. The vendor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the vendor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.
- (b) Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the vendor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency response shall be submitted to the CDRB at OATH's offices and one to the vendor. Extensions of time for submittal of the agency response

shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.

- (c) Further Proceedings. The Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the vendor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the agency's case. Neither the vendor nor the agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
- (d) CDRB Determination. Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
- (e) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the vendor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.
- (f) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with Section 4-09 of the PPB Rules.

8. Any termination, cancellation, or alleged breach of the contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this section.

#### ARTICLE 14. CONTRACT CHANGES

14.1 Changes may be made to this contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Contractors deviating from the requirements of the Contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original contract. Work so ordered must be performed by the Contractor.

14.2 Contract changes will be made only for work necessary to complete the work included in the original scope of the contract, and for non-material changes to the scope of the contract. Changes are not permitted for any material alteration in the scope of work. Contract changes may include any contract revision deemed necessary by the Agency Chief Contracting Officer.

14.3 The Contractor shall be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the Contractor will be entitled to an

extension of time for performance.

14.4 Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification.

14.5 All payments for change orders are subject to pre-audit by the Engineering Audit Officer and may be post-audited by the Comptroller. If the audits reveal that the Contractor's costs for the change order work were inaccurately stated during negotiations, the agency shall recoup the amount by which the costs were inaccurately stated by proportionately reducing the price of the change order. This remedy is not exclusive and in addition to all other rights and remedies of the City.

#### ARTICLE 15. MACBRIDE PRINCIPLES PROVISIONS

15.1 Notice to all Prospective Contractors: Local Law No. 34 of 1991 became effective on September 10, 1991 and added section 6-115.1 to the Administrative Code of the City of New York. The local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of work place opportunity.

15.2 Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business operations in Northern Ireland conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

15.3 Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

15.4 In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

15.5 In accordance with section 6-115.1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

15.6 For purposes of this section, the following terms shall have the following meanings: "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of work place opportunity which require employers doing business in Northern Ireland to:

- 15.6.1 increase the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- 15.6.2 take steps to promote adequate security for the protection of employees from under represented

- religious groups both at the work place and while traveling to and from work;
- 15.6.3 ban provocative religious or political emblems from the work place;
- 15.6.4 publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;
- 15.6.5 establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- 15.6.6 abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- 15.6.7 develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- 15.6.8 establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- 15.6.9 appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

15.7 The contractor agrees that the covenants and representations in Paragraph 16.5 above are material conditions to this contract. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirement contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

ARTICLE 16 - PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

NOTICE TO ALL PROSPECTIVE CONTRACTORS  
ARTICLE 1. MWBE PROGRAM

Local Law 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services (DSBS) promulgated thereunder.

Article I, Part A, below, sets forth provisions related to the participation goals for construction and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE program.

PART A: PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

1. The target subcontracting percentage applicable to this contract is set forth on Schedule A if this is a solicitation for a construction contract, and in Exhibit A if this is a solicitation for professional services.

The “target subcontracting percentage” is the percentage of the total contract which Agency anticipates that the prime contractor for this contract would in the normal course of business award to one or more subcontractors for amounts under \$1 million. A prospective contractor may seek a full or partial pre-award waiver of the target subcontracting percentage in accordance with Local Law 129 and Part A, Section 9 below.

2. The participation goals established for this contract are set forth on Schedule A if this is solicitation for a construction contract, and in Exhibit A if this is a solicitation for professional services.

Participation goal percentages are percentages of the total dollar value of all subcontracts under this Agreement for amounts under \$1 million.

3. If participation goals have been established for this contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under \$1 million, Contractor shall be subject to the participation goals, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 10 below.

4. If participation goals have been established for this contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a utilization plan indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under \$1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the time frames in which such work by MBEs and/or WBEs is scheduled to begin and end. In the event that this utilization plan indicates that the bidder or proposer, as applicable, does not intend to award the target subcontracting percentage, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the target subcontracting percentage in accordance with Local Law 129 and Part A, Section 9 below.

5. Where a contractor utilization plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. In the event that the Contractor’s selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. Where a contractor utilization plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.

7. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor’s utilization plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has obtained a modification of its utilization plan in accordance with Local Law 129 and Part A, Section 10 below.

8. Where a contractor utilization plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.

9. Pre-award waiver of target subcontracting percentage. Agency may grant a full or partial waiver of the target subcontracting percentage to a bidder or proposer, as applicable, who demonstrates—before submission of the

bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, as applicable, has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts for under one million dollars represented by the target subcontracting percentage. In making such determination, Agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the contract that it intends to subcontract.

10. Modification of utilization plans. The Contractor may request modification of its utilization plan after the award of this contract. Agency may grant such request if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good faith efforts to meet the goals set by Agency for the contract. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (a) The Contractor advertised opportunities to participate in the contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- (b) The Contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority and women's business organizations;
- (c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBE's that their interest in the contract was solicited;
- (d) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the contractor utilization plan, and for which the Contractor claims an inability to retain MBE's or WBE's;
- (e) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;
- (f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;
- (g) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;
- (h) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBE's.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

11. If participation goals have been established for this contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

## PART B: MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of a contractor utilization plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the contractor utilization plan.

2. Directories of certified MBEs and WBEs are available on DSBS's website at [www.nyc.gov/html/sbs](http://www.nyc.gov/html/sbs) and at DSBS's office located at 110 William Street, 3<sup>rd</sup> floor, New York, NY 10038.

3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts.

4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

## ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this contract and the agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this contract that implements Section 6-129, including, but not limited to any contractor utilization plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this contract that implements this Section 6-129, including, but not limited any contractor utilization plan, Agency may determine that one of the following actions should be taken:

- (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) revoking the contractor's pre-qualification to bid or make proposals for future contracts;
- (c) making a finding that the contractor is in default of the contract;
- (d) terminating the contract;
- (e) declaring the contractor to be in breach of contract;
- (f) withholding payment or reimbursement;
- (g) determining not to renew the contract;
- (h) assessing actual and consequential damages;
- (i) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;
- (j) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such contract to the contractor that has been found to be in noncompliance; or
- (k) take any other appropriate remedy.

4. Whenever Agency has reason to believe that an MBE or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129), or has violated any provision of Section 6-129, Agency shall notify the commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

5. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

6. The Contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.