



**THE CITY OF NEW YORK
FIRE DEPARTMENT**

REQUEST FOR PROPOSALS

FOR THE PROVISION OF:

**CONSTRUCTION MANAGEMENT SERVICES FOR INFRASTRUCTURE
UPGRADES, REPAIRS, AND RENOVATION AND REHABILITATION OF
PROJECTS AT VARIOUS FDNY FACILITIES WITHIN NEW YORK CITY**

Procurement Identification No.: 057060002902

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AUTHORIZED AGENCY CONTACT PERSON

Proposers are advised that the Authorized Agency Contact person for all matters concerning this Request for Proposals (RFP) is:

Name: Malissa Smith
Title: Contract Officer
Mailing Address: Fiscal Services/Contract Development
9 MetroTech Center, 5W-14-K
Brooklyn, NY 11201
Telephone #: (718)-999-2845/1234
Fax #: (718)-999-0177
E-mail Address: smithma@fdny.nyc.gov

SECTION I - TIMETABLE

A. Release Date of This Request for Proposal: **March 5, 2007**

All questions and request for additional information concerning this RFP should be directed to Malissa Smith, the Authorized Agency Contact Person at:

Telephone #: (718) 999-2845/1234
Fax #: (718) 999-0177
E-Mail Address: smithma@fdny.nyc.gov

Proposers should submit questions no later than 10 business days prior to the proposal due date since the Agency may be unable to respond to questions received after than date.

B. Proposal Due Date and Time and Location:

Date: **April 12, 2007**

Time: **4:00 P.M.**

Location: Proposals shall be submitted to the attention of Malissa Smith, Contract Officer at the New York City Fire Department, 9 MetroTech Center 5th Floor, Room 5W-14-K, Brooklyn, New York 11201.

Proposals received at this Location after the Proposal Due Date and Time are late and will not be accepted by the agency, except as provided under New York City's Procurement Policy Board Rules.

E-mailed or faxed proposals will not be accepted by this agency.

The Agency will consider requests made to the Authorized Agency Contact Person to extend the Proposal Due Date and Time prescribed above. However, unless the Agency issues a written addendum to this RFP, which extends the Proposal Due Date and Time for all proposers, the Proposal Due Date and Time, prescribed above shall remain in effect.

C. Anticipated Contract Start Date: **September 2007**

SECTION II - SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of the RFP

The Fire Department is seeking a highly qualified vendor to provide Construction Management Services for infrastructure upgrades, repairs, and renovation and rehabilitation of projects at various FDNY Facilities throughout the City of New York. The services to be provided by the Construction Manager (“CM”) shall include the management and supervision of all required construction work for each project from commencement through substantial completion, final acceptance and project closeout.

B. Anticipated Contract Term

It is anticipated that the term of the contract awarded from this RFP will be from the date of the written Notice to Proceed until the expiration of five (5) consecutive years unless otherwise terminated, cancelled, abrogated, or amended in accordance with the terms of the Agreement.

C. Anticipated Payment Structure

The payment structure of the contract awarded from this RFP will be based on the criteria listed below.

- The CM shall furnish a cost proposal for each Project delineating the estimated hours in each professional title multiplied by the fixed hourly rate. All price quotes shall be subject to the review and approval of the Authorized FDNY Representative and the Agency Chief Contracting Officer.

D. Participation by Minority Owned and Women Owned Business Enterprises in City Procurement

The contract resulting from this Request for Proposals will be subject to Local Law 129 of 2005, the Minority-Owned and Women-Owned Business Enterprise (M/WBE) program. Please refer to Attachment G for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms.

An M/WBE Subcontractor Utilization Plan is required for this proposal. The plan should be submitted in a separate, sealed envelope marked “M/WBE Utilization Plan” at the same time the technical proposal is submitted. This envelope will be opened only if the firm is selected for fee negotiations. Failure to include or properly fill out the M/WBE Subcontractor Utilization Plan will result in a determination of non-responsiveness. If a full waiver has been granted, the proposer shall include the signed waiver form in the envelope *in lieu of* an M/WBE Subcontractor Utilization Plan. If a partial waiver has been granted, the proposer shall include the signed waiver form in the envelope with their M/WBE Subcontractor Utilization Form.

Note: As fully explained in Attachment G, if you are planning to request a waiver of the Target Subcontracting Percentage, the waiver must be submitted to the Agency at least seven days prior to the proposal due date and time in order to be considered.

SECTION III - SCOPE OF SERVICES

A. Fire Department Goals and Objectives

The Fire Department's goals and objectives for this solicitation are to obtain the services of a Construction Management Contractor for the purposes of providing uniform, high quality construction project planning, management, and execution of infrastructure upgrades, repairs, and renovation and rehabilitation of projects at various FDNY Facilities throughout the City of New York.

B. Fire Department Assumptions Regarding Contractor Approach

The Fire Department's assumptions regarding which approach will best achieve the goals and objectives of providing Construction Management Services are:

- The Department reserves the right to define the scope and type of projects according to the requirements of the Department at any time during the Agreement. The Department will not be required to order any quantity of services, nor shall it be limited to the scope and type of projects required by the Department to fulfill its needs.
- The Construction Management Services shall include but not be limited to Pre-Construction services including Design, Constructability and Site Survey Reviews; all managerial, supervisory, technical and administrative services necessary to supervise and coordinate all construction work specified in a Project issued herein at such time as the Notice to Proceed is received in order to expedite completion of the work on schedule. Said services shall be required from pre-construction and project commencement through substantial completion, final acceptance, and project closeout. The Department stipulates that any particular or specific procedural description that has been omitted herein, or any conditions not seen during site inspections, shall not absolve the CM from providing such complete services.
- The CM shall not charge the Department for attending status meetings, conferences, consultation meetings or any other meetings, and will not invoice for attendant expenses incurred during such travel, food or lodging. The Department will not pay for travel time to or from its facilities.
- The CM shall whenever required during the Agreement, submit pricing data and certify that the pricing data submitted are accurate, complete, and current as of a specified date.
- The prices shall remain fixed for the duration of the contract and shall not be subject to any additions, mark-ups, percentage multipliers, or cost of living increases.

1. General

- a. The CM shall, as directed by the Department on a Project basis, provide pre-construction, construction management, and consulting services described in Section III (B)(1) for various Projects identified by the Department. The description of pre-construction,

construction management, and consulting services set forth in Section III (B)(2) represents the range and type of services the CM shall be required to provide.

- b. The CM shall submit a Project proposal. The Department will furnish the CM relevant information, which may include but not be limited to the following:
 - i. A description of the construction project or assignment.
 - ii. The construction management services to be provided.
 - iii. All requirements for scheduling and/or phasing of the work.
 - iv. All requirements for purchasing and/or monitoring the purchase of long lead items.
 - v. All requirements applicable to the work.
 - vi. Any required additional services.
 - vii. The proposed time frame for completion.
- c. The CM shall provide construction management services in accordance with the Project's process outlined herein. The CM shall prepare a Project Proposal outlining the specific requirements of the Project that shall include but not be limited to the following:
 - i. Descriptions of the construction project or assignment for which services are required.
 - ii. The construction management service(s) to be provided. The CM shall include a detailed description of the Work to be performed for each phase of the Project to include but not be limited to Pre-Construction, Construction and Project Closeout.
 - iii. The staffing requirements in the form of a Staffing Plan, including a list of required titles, specific personnel for each title, direct salary rates for such personnel, and total estimated number of hours per title for each phase of the Project.
 - iv. All requirements for scheduling and/or phasing of the Work.
 - v. All requirements for the purchase and/or monitoring of the purchase of long lead items.
 - vi. All requirements applicable to the Work.
 - vii. The time frame for completion of the construction project through final acceptance and an accompanying CPM schedule denoting major project milestones.
 - viii. The Project Plan shall specify the allowance amount for the construction management services to be provided for each phase of the project.

- d. The CM shall submit the Project Proposal within seven (7) calendar days after receipt of the Department's request for the same.

2. Description of Work

The CM shall provide all services managerial, supervisory, technical or administrative, necessary to supervise and coordinate all construction work specified in a Project.

- a. Summary Scope:

CM Services shall include but not be limited to, the supervision of the following projects:

- Interior renovation,
- Reconstruction of apparatus floors, sidewalks, and parking lots,
- Roof replacements,
- Retaining walls and fencing,
- Façade restorations,
- Electrical upgrades,
- Window replacements,
- Plumbing rehabilitation,
- Boiler replacements (including converting from oil to gas),
- Hot water heater replacements,
- HVAC rehabilitation,
- Overhead doors replacements,
- Asbestos abatements,
- Emergency Generators.
- Interior and Exterior Site Surveys and Evaluations.

The Work shall not include the design and construction of new buildings and facilities; and the renovation of buildings and facilities requiring substantial structural work and/or entire system replacement.

- b. The CM shall also provide consulting services deemed necessary by the Department, as specified in the Project.
- c. Construction Management Services shall include but not necessarily be limited to the following:
 - i. Responsibilities throughout All Phases of Construction.
 - a) Furnishing of all management, supervision, labor, materials, supplies, and equipment relative to direction, coordination and expediting of construction work.
 - b) Planning, scheduling, coordinating and assuring effective performance of all services described herein.

- c) Establishing an organization with lines of authority to effectively carry out the required work.
 - d) Reviewing and updating the status of the budget for each Project, including design, construction, construction management and any other project related costs.
 - e) Providing monthly reports to the FDNY Authorized Representative comparing the Project budget, progress schedule, current disbursements, and cost estimate to complete.
 - f) Scheduling and participating in meetings with the A-E and other entities or individuals involved with the project to discuss procedures, progress, problems, scheduling and all related issues.
- ii. Responsibilities during the Pre-Construction Phase.

- a) Work in coordination with the FDNY Authorized Representative and the A-E to assist in filing with all required regulatory agencies.
- b) Construction Documents

The CM shall review and provide written comments with respect to all design documents for the project prepared by the A-E and all shop drawings prepared by Contractors and equipment manufacturers performing construction work. The CM's reviews shall include but not be limited to constructability; coordination; economy and efficiency; compliance with Department comments; avoidance of inconsistencies, problems, delays and change orders during the construction process.

- i) The CM shall coordinate the work of the A-E to assure that any required addenda to the Construction Documents are promptly issued, during the Contractor competitive bidding process.
- ii) The CM shall make every effort to identify and/or correct professional errors or omissions in the design documents and/or shop drawings.
- iii) The CM shall review the A-E's scope, schematic, preliminary and final documents and estimate of cost. The CM shall also comment and make recommendations with respect to such factors as construction methods and materials, suggested economies, availability of materials and labor, time requirements for installation and construction, and cost.
- iv) The CM shall review the plans and specifications with the A-E and make recommendations to the FDNY Authorized Representative and the A-E in connection with the division of work for the purpose of bidding, while considering factors such as type or scope of work to be performed, time of

performance, availability of labor, community relations and other pertinent criteria, relating to the various trades involved.

- v) The CM shall review the plans and specifications and advise the A-E of areas of possible conflicts and overlapping jurisdiction among the Contractor(s) on the job. The CM shall also recommend solutions for the elimination of such areas so that the work on the project may be advanced and completed
 - vi) The CM shall review schematic and preliminary construction plans, working drawings, specifications, and feasibility studies for alternate solutions prior to the acceptance by the Department. The CM shall also make recommendations with respect to their adequacy for maintenance of work schedules.
 - vii) The CM shall review specifications to assure that they contain provisions for all temporary facilities necessary to enable all Contractor(s) to properly perform the work and provisions for all the job-site facilities necessary to enable the Construction Manager, the A-E and the FDNY Authorized Representative to perform their duties in connection with construction.
- c) The CM shall review the project budget provided by the FDNY Authorized Representative to account for all funds available or to be made available for the project and identify amounts available for each activity that shall include but not be limited to design, construction, and testing; allowances shall also be made for contract modifications. The CM shall take into consideration any anticipated increases in labor and material costs based on known and historical pending or expected increases.

d) Project Schedule

The CM shall develop a management plan establishing a Project Schedule, a budget, and the identification of project participants and their responsibilities, the relationships between them and the management controls and procedures to be implemented.

- i) The CM shall develop a CPM Project Schedule, detailing all major milestones involved in the project, their relationships, start dates, completion dates and planned duration. The Project Schedule shall include allowances for normal delays due to unusual weather and other causes, and to the extent possible, for labor stoppages.
- ii) When the project is located in an occupied building or requires phasing, the CM shall recommend scheduling to provide the least inconvenience to the occupants, and the least interference with the functions of the building and the maximum efficiency and constructability of the work.

- iii) The Project Schedule shall be updated on a monthly basis to ensure complete understanding of all involved parties of activities to be accomplished.
- iv) When appropriate and as directed by the FDNY Authorized Representative, the Project Schedule shall be revised, subject to written approval by the FDNY Authorized Representative.
- v) The CM shall prepare copies of the Project Schedule and all subsequent revisions for all participants of the Project to include but not be limited to the FDNY Authorized Representative, A-E, Contractor(s), Equipment Manufacturers as necessary, and all other interested parties.
- e) The CM shall prepare, assist in preparing, review, evaluate and advise with respect to bid documents.
- f) The CM shall plan, schedule and conduct pre-construction conferences and take accurate minutes for distribution to the FDNY Authorized Representative and all conference participants.
- g) The CM shall make recommendations to the FDNY Authorized Representative and the A-E for changes in the work, if deemed necessary:
 - i) Such recommendations shall not pertain to the design of the structure or the structural integrity of the structure. The CM shall promptly notify the FDNY Authorized Representative and the A-E of any observation concerning the same.
 - h) The CM shall monitor and analyze the bidding climate to make recommendations to the FDNY Authorized Representative and the A-E as to assure proper market conditions.
 - i) The CM shall ensure that all construction work is included in the construction contract.
- iii. Responsibilities During the Construction and Post Construction Phases.
 - a) Permits and Inspections

The CM shall ensure that Contractor(s) make all arrangements for work permits, and all work permits are obtained as required under New York City Building Code.

 - i) The CM shall assist in the coordination of the Contractors' obligations to obtain all required permits, licenses and certificates.

- ii) The CM shall assist the A-E and the FDNY Authorized Representative in obtaining necessary permits and any other required approvals including the Certificate of Occupancy.
- iii) The CM shall ensure that all controlled inspections and all off site inspections as required by the New York City Building Code are satisfactorily performed. The CM shall also provide technical inspection and coordination of the work of the various Contractor(s) on the Project(s).
- iv) The CM shall provide technical inspection and coordination of the work of the Contractor(s) until final completion and acceptance by the Department. The CM shall verify that all materials furnished and work performed are in accordance with the plans, specifications and other contract documents
- vii) The CM shall ascertain that all cement, concrete, structural or reinforcing steel, or of any other materials or equipment required to be tested under the terms of the contract documents are performed.
- viii) The CM shall periodically inspect the work jointly with the A-E. The CM shall also inspect the work as many times as necessary prior to the time the Department will take over, use, occupy or operate any part or the entire Project. The CM shall furnish a detailed report to the Department and the A-E that shall include but not limited to the following information:
 - (a) The detailing of all discrepancies and deficiencies in the work performed by any Contractor.
 - (b) Determining of substantial completion or beneficial occupancy as appropriate.
 - (c) Preparation of all necessary punch lists and expeditious execution of the same.

b) Construction Project Management

The CM shall maintain a competent supervisory and inspections staff for the project as approved by the Department for the coordination and inspection of the work of the various Contractor(s).

- i) The CM shall implement and follow procedures for coordination among the City, the A-E, the various Contractor(s) and the CM with respect to all aspects of the project.
- ii) The CM shall obtain and follow procedures for coordination among the City, the A-E, the various Contractor(s) and the CM with respect to all approved drawings associated with the Project. The CM shall ensure that these approved drawings are used for construction.

- iii) The CM shall conduct project meetings as required, to be attended by Contractor(s) and the Authorized Representatives of the Department and the A-E to discuss such matters as procedures, progress, problems and scheduling. The CM shall also prepare minutes and distribute copies to all participants.
- iv) The CM shall review and coordinate Contractor(s)'s proposed construction schedules and prepare where necessary, a Revised Project Schedule for the project.
 - (a) The CM shall update the Project Schedule as required to incorporate approved scheduling changes as submitted by Contractor(s) and as per the requirements noted herein in Section III (B)(2)(c)(ii)(d) above.
- v) The CM shall review Contractor applications for extensions of time and make recommendations to the FDNY Authorized Representative. The CM will as necessary provide an updated Project Schedule that makes note of the impact of the time extension on the progress of the project and the ability of other Contractors to perform. The Department shall reserve the right to incur liquidated damages for any and all delays that may impact the progress of the project if it is deemed that notification of said project delays by the CM, due to a delay in notifying the Department, has negatively impacted on the progress of the project.
- vi) The CM shall promptly notify the FDNY Authorized Representative of any deviation(s) from approved contract drawings, specifications or shop drawings.
- vii) In the event that interpretation of the meaning and intent of the plans and specifications becomes necessary during the construction, the CM shall, on behalf of the Department, consult with the A-E, ascertain the A-E's interpretation, and shall prepare a report for the Department incorporating the A-E's intention, the Contractor's interpretation and they by the CM. Such a report shall contain all pertinent data.
- viii) The CM shall make recommendations to the FDNY Authorized Representative and the A-E regarding the use and approval of Contractors and materials vendors.
- ix) The CM shall make recommendations to the FDNY Authorized Representative as to the capabilities and qualifications of all Contractors and sources of supply of equipment and materials proposed by them.
- x) The CM shall implement procedures to ensure expedited processing of shop drawings, catalogue cut sheets, materials samples and materials requirements scheduling.

- xi) The CM shall maintain that record drawings are kept current and produced in accordance with contract requirements.
- xii) The CM shall provide services relating to the design and construction of the project. The CM shall assist the Department at no additional fee or other compensation, excluding the expenses of personnel who are assigned to the job-site, management staff, or comparable personnel.
- xiii) The CM shall provide a complete set of "As Built" drawings to the Authorized FDNY Representative at the completion of each Project.

c) Construction Quality Assurance

The CM shall provide construction quality assurance for the project in accordance with the provisions of this contract.

- i) The CM shall prevent installation of work, material or equipment that has not been properly approved or otherwise fails to conform to contract requirements. The CM shall inform the FDNY Authorized Representative promptly of such action and the reasons for and outcome of such action.

d) Site Safety

The CM shall undertake the following responsibilities with respect to the safety of the site:

- i) Review, revise and adjust as necessary the Safety Program developed by the Contractor(s), coordinate all Safety Programs for the Project and the appropriate action to enforce the adherence of the Contractor(s) to such program.
- ii) Promptly notify the FDNY Authorized Representative and the Contractor(s) if the CM observes any hazardous conditions at the site or non-compliance by the Contractors with its Safety Programs, any applicable safety regulations or contract requirements.
- iii) Take or cause to be taken precautions to minimize the risk of injury to persons and damage to property resulting from or arising out of the Work.
- iv) In the event of an emergency or threat of imminent physical danger, the CM shall take action to cease all work in the area to include the evacuation of the site as necessary. The CM shall notify the responsible Contractor(s) and such site supervisory personnel as necessary to affect such action and provide assistance where necessary. The CM shall notify the FDNY Authorized Representative within ten (10) minutes of the occurrence of any such emergency condition by cell phone or other mutually agreed upon method.

- v) Monitor on an on-going basis the activities of the Contractor(s) and conditions at the site for conformance with the Construction Documents to ensure that a clean and safe environment is maintained at the site, and in compliance with all applicable city, state and federal laws, regulations and guidelines.

e) Hazardous Materials

The CM shall review hazardous materials removal and/or remediation of hazardous materials programs in the area of any required demolition. Hazardous materials shall include without limitation asbestos, methane and lead. If the CM observes non-compliance with an applicable hazardous materials removal and/or remediation of hazardous materials, the CM shall immediately notify the FDNY Authorized Representative and the appropriate Contractor.

The CM shall not be responsible for prescribing, instituting or maintaining a hazardous materials program, nor for providing independent inspection and/or air monitoring services for any removal and/or remediation of hazardous materials, except as requested by the FDNY Authorized Representative.

The CM shall, upon request, provide independent inspection and/or air monitoring services for removal and/or remediation of hazardous materials. Said hazardous materials removals and all applicable monitoring must be completed before any other contracted work in that area can proceed.

f) Americans with Disabilities Act Compliance

The CM shall develop a Compliance Plan for all Projects entailing publicly accessible work site areas. The Compliance Plan shall set forth how the services and accessibility of the site shall be usable by individuals with disabilities. In the event the work site is not readily accessible and usable by individuals with disabilities, the CM shall also include in the Compliance Plan a description of reasonable alternative means and methods that result in making the services readily accessible to and usable by individuals with disabilities. Said alternative accessibility shall be made usable by individuals with disabilities, including but not limited to people with visual, audio, or mobility disabilities. (See Appendix B)

g) The CM shall render assistance where required, to minimize delays to the project caused by labor disputes during construction.

h) Change Order Management, Cost Control and Payments

The CM shall review all requests for Change Orders. The CM shall implement a Change Order processing procedure that includes obtaining Change Order proposals from Contractors, proposal review and evaluation, and a written recommendation for each proposal to be provided to the FDNY Authorized Representative for review.

- i) The CM shall be prepared to substantiate all evaluations to the FDNY Authorized Representative, the Engineering Audit Officer, the Comptroller and any other agency having legal jurisdiction in this area. Such recommendations shall not pertain to the design of the structure or the structural integrity of the structure; the CM shall promptly notify the FDNY Authorized Representative and the A-E of any observation concerning same.
- ii) The CM shall prepare independent cost estimates on work to be performed on change orders, or other extra costs that may be incurred during the progress of the work
- iii) The CM shall maintain cost accounting records in accordance with the City's procedures with respect to work to be performed on a time-and-materials, unit cost, or similar basis.
- iv) The CM shall review and evaluate any other expected items of work to be done by the Contractor on a negotiated basis.
- v) The CM shall review all applications by the Contractor(s) for progress payments and final payment. The CM shall also make recommendations to the FDNY Authorized Representative and the A-E, for approval or rejection, in accordance with Department's procedures.

i) Written Records and Reports

The CM shall maintain accurate and detailed written records of the progress of the project during all stages of planning and construction. The CM shall also submit written progress reports to the Department and A-E on a monthly basis. The progress reports shall include but are not limited to containing;

- i) Status of the project Contractor(s) including quality of work and noting any issues, problems or concerns that may negatively impact on the project.
- ii) The percentage of completion and the number and amount of change orders.
- iii) Provided in-put information to the FDNY Authorized Representative.
- iv) An updated Project Schedule reflecting completion status and upcoming milestones annotated to show any schedule changes due to conditions, change orders, or other factors.

j) Guarantees

The CM shall collect guarantees, maintenance and operations manuals, keying schedules and other data required of the Contractors, and any associated equipment manufacturers, and maintain any photographic records, material and equipment delivery records, visual aids, charts and graphs. The CM shall provide

documentation to substantiate the successful commissioning of all HVAC, Electrical, or other equipment installed by Contractors as part of the project. The CM shall arrange for A-E participation where necessary to substantiate the commissioning of the equipment as noted.

- i) Prior to the end of the guarantee period provided, the CM shall furnish a detailed report to the FDNY Authorized Representative of discrepancies and deficiencies applicable to such guarantee.

k) Daily Log Book

The CM shall maintain a daily log book, which shall include but not be limited to the following data:

- i) All work accomplished the preceding workday.
- ii) The number of employees employed at the site by each Contractor.
- iii) The number of hours worked.
- iv) Material shortages.
- v) Labor Difficulties.
- vi) Weather conditions.
- vii) A list of visiting officials and jurisdictions.
- viii) Daily activities performed.
- ix) All actions taken.
- x) Specific observations as required.

l) Files

The CM shall maintain orderly files for correspondence, reports of job conferences, shop drawings, and other submissions, reproductions or original contract documents including all addenda, change orders, supplemental drawings and all other project-related documents.

m) Services Performed

The CM shall perform other services as may be requested by the Department from time to time, such services may be directly or indirectly related to the underlying construction project.

3. Qualifications of the Contractor

- a. Contractors submitting a proposal in response to the work delineated in this solicitation shall meet the following requirements:
 - i. At the time of the bid submission, Corporations or companies providing such services shall have demonstrated prior services which are satisfactory to the FDNY with respect to experience and background knowledge of the Construction Management described in the Scope of Services, Section III herein. Individual experience of employees of the organization cannot be used to satisfy this requirement.
 - ii. Joint Ventures, for the purpose of this project, shall have experience, as described in one (i) above, for each individual contracting organization.
 - ii. Individuals or sole proprietors shall have experience, as described in one (i) above.
- b. At the time of the bid submission, the Contractor and Contractor personnel shall possess all required certifications, licenses, permits and any other authorizations necessary to perform Services in accordance with all Federal, State and City rules and regulations.
- c. The Contractor shall demonstrate sufficient expertise in the areas of Construction Management Services. Such experience shall include but not be limited to the following:
 - i. Construction Management Services:
 - Project Management;
 - Construction Management;
 - Construction Supervision;
 - Project Management;
 - Cost Estimating;
 - Change Order Management;
 - Subcontract Management;
 - Project Scheduling;
 - Site Safety;
 - Site Inspections;
 - Quality Assurance and Quality Control.
- d. The Contractor shall provide documentation that shall include but not be limited to: financial statements, corporate reports, individual resumes, copies of degrees, training certificates, listing of projects, and independent references that substantiate experience as noted in (c) above.

4. Qualifications of the Contractor Personnel

- a. The Contractor shall have in its employ at all times a sufficient number of capable and qualified employees to enable it to perform the Services as specified in the Agreement. The employees shall have training and demonstrated ability in the specified areas, and

possess all applicable certificates and qualifications. At the time of the proposal submission, the Contractor shall provide a copy of all applicable certificates for each employee to be assigned to the project.

- b. The Contractor shall provide qualified personnel for the following job categories as noted below:
- i. Project Manager – a Bachelor of Science degree from an accredited college with a minimum of ten (10) years experience in various disciplines (architectural, engineering, structural, mechanical, fire prevention, etc.). The Project Manager will typically oversee multiple tasks, and coordinate and delegate assignments.
 - ii. Resident Engineer – a Bachelor of Science degree from an accredited college. The Resident Engineer will have five (5) years minimum experience as a Resident Engineer. The Resident Engineer will serve primarily as the on-site CM representative and inspector, and will be assigned to a particular project.
 - iii. Project Design Reviewer – a Bachelor of Science Degree from an accredited college with a minimum of five (5) years experience in design (plumbing, HVAC, architectural, structural, mechanical, etc.)
 - iv. Estimator – will have a minimum of three (3) years experience in cost analysis, and estimating.
 - v. Mechanical Inspector – a Bachelor of Science degree from an accredited college, and a New York State Professional Engineering license. The Mechanical Inspector will have ten (10) years minimum experience in mechanical disciplines (plumbing [cold/hot sewers], HVAC, Fire Protection [sprinklers/standpipes]).
 - vi. Electrical Inspector – a Bachelor of Science degree from an accredited college, and a New York State Professional Engineering license. The Electrical Inspector will have ten (10) years minimum experience in electrical disciplines.
 - vii. Structural Inspector – a Bachelor of Science degree from an accredited college, in the field of civil engineering and a New York State Professional Engineering license. The Structural Inspector will have ten (10) years minimum experience in all aspects of inspections.
- c. A detailed resume shall be submitted to the FDNY Authorized Representative for approval prior to the assignment of new employees. These qualification standards apply to both new and replacement personnel: the full names of the proposed supervisors, detailed descriptions of the previous 5 years' employment history, the name(s) and address(es) of the companies for whom the proposed supervisors worked for the past 5 years, along with the name(s) and telephone number(s) of the immediate supervisors during the time of employment.

- d. The Contractor shall ensure that all of the Services required by this Agreement are satisfactorily supervised. The Contractor shall provide such supervision as is sufficient to carry out all the terms and conditions of this Agreement.
- e. The Contractor shall designate one of its employees to function in the role of primary contact person. The contact person shall be the liaison for the Contractor for the term of the Agreement, and shall handle issues, problems or questions arising from the performance of Services.
- f. The Department reserves the right to review the credentials and qualifications of any Contractor personnel providing Services pursuant to this Agreement, and to instruct the Contractor not to use for such purposes any individual that the Department determines to be unqualified to perform the Services.
- g. The Department will notify the Contractor of any employee who in the opinion of the FDNY Authorized Representative, is not performing satisfactorily. The Contractor shall resolve the problem within fifteen (15) days, to the satisfaction of the Department. If the situation is not resolved to the satisfaction of the Department, then the employee shall be removed from this project. If necessary, the Contractor shall fill the vacancy with another employee who has the qualifications to perform the required tasks.
- h. Contractors that fail to conform to the personnel requirements set forth above shall be found non-responsive in accordance with Procurement Policy Board Rules.

5. Quality Control

The CM shall be responsible for developing a quality assurance program for each project in accordance with the provisions of the contract.

- a. The CM shall review the progress of each project to ensure that all work is completed per the explicit project plans and specifications and as amended during the project.
- b. The CM shall be responsible for reviewing safety programs developed by each of the Contractors to ensure that all safety requirements are met and in accordance with accepted work practices and in accordance with all local, state and federal laws that govern safe work practices on a construction site to include the safe handling of hazardous materials.
- c. The CM shall develop a system for identifying and correcting deficiencies in the quality of services before the level of performance becomes unacceptable and the FDNY identifies the deficiencies.

6. Project Terms and Conditions

- a. Compensation

- i. The CM shall furnish a cost proposal for each Project delineating the estimated hours in each professional title multiplied by the fixed hourly rate. All price quotes shall be subject to the review and approval of the FDNY Authorized Representative and the Agency Chief Contracting Officer. The Department shall not be responsible for any additional costs incurred by the CM without the written approval of another estimate.
- ii. The CM shall receive a Notice to Proceed order upon acceptance of the price quote by an Authorized Representative of the Department. The CM shall commence the CM services within seven (7) calendar days from receipt of the Notice to Proceed, or upon a date mutually agreed by the Fire Department and the CM.
- iii. The Department shall compensate the CM for construction management services in accordance with the pricing schedule (Price Proposal Form - Attachment B). For each project, the CM shall furnish a not to exceed price to furnish construction services. The CM shall furnish a complete project cost proposal delineating the labor in each category multiplied by fixed unit cost. All price quotes shall be subject to the review and approval of the FDNY Authorized Representative and the Agency Chief Contracting Officer. The CM will receive a Notice to Proceed. The construction management work shall commence within seven (7) days from receipt of the Notice to Proceed, or upon a date mutually agreed upon by the Fire Department and the CM.

b. Price Certification/Payment

i. Price Determination Guidelines

By submission of the offer, the proposer certifies and in case of a joint offer, each party certifies as to its own organization, that to the best of his knowledge and belief:

- a) The prices, warranties, benefits, terms and costs stated in the Contractor's proposal are at least equal to or more favorable to the City than the prices, warranties benefits, terms and costs charged or offered to commercial customers for similar services and are exempt from all sales taxes.
- b) The prices in a proposal 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 proposer or with any competitor.
- c) Unless otherwise required by law, the prices quoted in the Proposal have not been knowingly disclosed by the Contractor and will not knowingly be disclosed by the Contractor prior to award of the contract, directly or indirectly, to any other proposer or to any competitor.
- d) 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.

- e) That no elected or appointed official, council member or other officer or employee of the City of New York, or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in the Proposal, or in the services, supplies, materials, equipment, work or labor to which it relates, or in any of the profits therefore.
- f) The said Contractor is not in arrears to the City of New York upon any debt of contract, and is not under a defaulter, as surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts.

ii. Prompt Payment

- a) The Prompt Payment provisions set forth in Chapter 4, Section 4-06 of the Procurement Policy Board rules in effect at the time of this solicitation will be applicable to payments made under this contract. The provisions require the payment to Contractors of interest on payments made after the required payment date except as set forth in subdivisions c (3) and d (2), (3), (4), and (5) of Sections 4-06 of the rules the required payment date will be thirty (30) days after the Invoice Received or Accepted date ("IRA" date).
- b) The Contractor shall submit approved-format invoices to receive a payment, except where the contract provides that the Contractor shall be paid at pre-determined intervals without having to submit an invoice for each scheduled payment. Determinations of interest due shall be made in accordance with the provisions of Section 4-06 of the Procurement Policy Board Rules and General Municipal Law 3-a.

iii. Charges/Payments/Taxes

- a) Vendors may invoice the City monthly for authorized Fire Department approved services. (This payment is subject to negotiation.)
- b) PRICES SHALL REMAIN FIXED FOR THE TERM OF THE CONTRACT WITH NO PRICE INCREASES.
- c) THE CITY IS EXEMPT FROM ALL SALES TAXES; THEREFORE, CHARGES SHALL NOT CONTAIN ANY FEDERAL, STATE, COUNTY, CITY OR OTHER SALES TAXES.

iv. Executory (Non-Funding Clause)

- a) Each award obligation of the City is conditioned upon the availability of funds, which are appropriated or allocated for the payment of such an obligation.

7. Term of the Agreement

- a. The term of the Agreement shall be from the date of notification until the expiration of five (5) consecutive years.
- b. The CM shall commence work as described in this RFP within thirty (30) calendar days from the date of the written Notice to Proceed.

C. Fire Department Assumptions Regarding Performance-Based Payment Structures

The Fire Department's assumptions regarding which performance outcome measures and related financial incentives and/or disincentives will best assure that the selected proposer(s) will perform the work under the contract(s) awarded from this RFP in a manner that is cost effective for the Fire Department and most likely to achieve the Fire Department's goals and objectives shall be as described:

1. If the Contractor fails to provide the services and deliverables within the time frames established herein, the Contractor may be subject to fixed and liquidated damages of two hundred dollars (\$200.00) per calendar day or portion thereof that the Contractor fails to provide such services.
2. All such charges against the Contractor shall be deducted from money that is due or shall become due to the Contractor from the City. In the event that there is no money due the Contractor, then the Contractor shall pay the amount of damages due to the City.
3. The Contractor shall monitor all deliverables and services and shall promptly notify the ACCO and the FDNY Authorized Representative, by telephone or other means, of any failure to provide such deliverables and services in accordance with the contract schedule. The Fire Department shall determine if failure to provide such deliverables and services have caused or are likely to cause impairment to the operation of the Department or an inconvenience to the Fire Department. If it is determined that such failure to provide the deliverables and services have caused or are likely to cause such impairment or inconvenience, then the Fire Department shall notify the Contractor in writing, and provide a cure date to the Contractor. The cure date shall provide the Contractor with a time period to cure the situation to avoid liquidated damages. Decisions of the Fire Department in this regard shall be final and shall not be arbitrary or capricious.

SECTION IV – FORMAT, CONTENT AND SUBMISSION OF THE PROPOSAL

Instructions: Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8 1/2" x 11" paper. The City of New York request that all proposal be submitted on paper with no less than 30% postconsumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing/htm>) Pages should be paginated. The proposal will be evaluated on the basis of its content, not length. Failure to comply with any of these instructions will not make the proposal non-responsive.

A. Proposal Format

1. Proposal Cover Letter

The Proposal Cover Letter form (Attachment A) transmits the Proposer's Proposal Package to the Agency. An official authorized to bind the proposer must sign the Proposal Cover Letter.

2. Technical Proposal

The Technical Proposal is a clear, concise narrative and includes the following:

- a. **Table of Contents:** Provide a table of contents for the materials contained in the proposal.
- b. **Summary:** Provide a summary of the important features of the proposal, including the Proposer's understanding of the issues.
- c. **Qualifications and Experience:**
 - i. Demonstrate the Proposer's relevant qualifications and experience in the last five (5) years, background, and knowledge, both for the firm as a whole, for each key staff person and, if applicable, each subcontractor the proposer intends to assign to the effort required for the proposed services.
 - ii. Provide a narrative description of the Proposer's demonstrated ability to provide a high level of construction management expertise to ensure that all requirements are met as described herein. Site specific examples and provide a synopsis of five (5) completed projects over the past five (5) years to include the project scope, methodologies employed, and challenges with respect to meeting the project requirements.
 - iii. Provide a resume and/or qualifications for each proposed key staff person.
 - iv. Provide a synopsis of the scope of any similar project(s) conducted by the firm as a whole and/or in which proposed key personnel participated.

- v. Provide the name, address, contact name, and telephone number of all subscribers to similar contracting services. If possible, list clients within the New York metropolitan area.

d. Organizational Capability:

- i. Demonstrate the organizational capability of the firm. The proposer shall provide information concerning (1) the number of full-time people currently employed by the firm, (2) the projects on which the firm is currently working, (3) the projects the firm has completed, and (4) future projects to which the firm is committed. All project information shall include the dollar value of the contract, as well as the schedule.
- ii. Provide a description of the organization and management structure. Identify how the organization carries out mission-essential and other support tasks, define operational procedures, provide a description of how the organization improves its mission, and how decisions are managed.
- iii. Provide a projection of how this project will affect the proposer's current workload and standby capability. Specifically cite any on going jobs, and demonstrate that they would not impact the proposer's capability to successfully implement this project.
- iv. Provide a statement affirming the proposer's availability in the NYC area and for all aspects of service required herein.
- v. State whether or not there are any pending legal proceedings to which the proposer and any of its subsidiaries are a party to, of which any of their property is subject and any proceedings known to be contemplated by governmental authorities. If so, describe the nature and circumstances of the pending proceeding in detail.
- vi. Attach a copy of the proposer's latest annual financial report, audit report, or most recent federal tax return with all schedules and sub-schedules.

e. Proposed Approach:

Present a **DETAILED** description of how the proposer will accomplish the tasks described in the Scope of Services. Specifically address the following:

- i. Describe the Proposer's solution and demonstrate that it will effectively meet the goals and objectives set forth in this RFP by providing:
 - a) A description of the proposed solution to meet the goals set forth in this RFP.
 - b) A narrative overview of the capabilities of the Proposer and key personnel, and of the methodology to be employed in meeting the requirements of the RFP.
 - c) A project description including tasks and proposed time frame for start-up of the operation, and delivery of services

- d) A narrative overview of the proposed interaction between the Proposer, the A-E and the Department with respect to managing projects as described herein. The Proposer shall site specific examples of services provided for projects of similar scope and complexity.
- e) Specific descriptions of workflow processes, project management and control procedures, Contractor/A-E and client communications procedures, project scheduling and reporting procedures, and detailed descriptions of the workflow methodologies to be employed from Pre-Construction through Project Closeout. Areas to be addressed include: Design and Specification, Constructability, Estimating, Project Management, Project Scheduling, Contractor Management, Change Order Management, Work Site Safety, Hazardous Materials Management, and Project Closeout.
- ii. Describe and demonstrate the effectiveness of the Proposer's plan for managing and implementing this project.
- iii. Describe and demonstrate the effectiveness of the methods of quality control the proposer will utilize. The Proposer should site specific examples of quality control methods employed on projects of similar scope and complexity.
- f. **Proposer Exceptions:**

The terms and conditions contained herein to include any terms and conditions contained in the RFP, Attachments, Appendices and Addenda, shall be the terms and conditions under which the Proposer shall agree to upon award.

Define any exceptions taken to the requirements of the RFP, including general provisions for Service Contracts included in any Attachments, Exhibits and Appendices contained herein. The exceptions should be included in a separate section of the Technical Proposal and clearly identified as such.

Note: The technical proposal shall not include any pricing information or any exceptions or notes referencing the pricing proposal. All such pricing information shall be included only in the price proposal submission.

3. Acknowledgment of Addenda (Attachment C):

This form serves as the respondent's acknowledgment of the receipt of Addenda, which may have been distributed by the FDNY prior to the proposal due date and time.

4. Affirmation of Taxes Paid (Attachment D)

This form serves as the respondent's affirmation of and declaration that the proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not

responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts with the exception of listed items. The proposer should complete this form as instructed, and include it as an attachment to the Technical Proposal.

5. Price Proposal

A form for the submission of the Fee Proposal is included as Attachment B of the RFP.

Proposers shall only submit the price proposal upon receipt of written notification from the FDNY. Upon written notification, the Proposer must submit the Fee Proposals in a clearly labeled, sealed package within ten (10) business days of such notice.

The Fee Proposal shall consist of the following:

- a. The Price Proposal Form (Attachment B) shall be utilized by the Proposer for the submission of the Price Proposal. The Proposer shall respond to the written request for the Price Proposal within ten (10) business days of receipt. An authorized officer of the firm must sign the price proposal. Negotiated prices shall remain fixed for the term of this contract.
- b. All fees and rates per title hour shall be fully burdened ("Fully Burdened") and shall include but not be limited to all management, supervision, labor, capital equipment costs, materials, supplies, consumables, repair parts, and equipment necessary to provide the applicable services. The fully burdened fees shall include but not be limited to all payroll, statutory Contractor payments such as Social Security and Worker' Compensation, fringe benefits, Contractor overhead and expenses, travel time, insurance, transportation costs, tolls, vehicles, attendant expenses, consumable materials, all auxiliary costs, (such as administrative support, office materials, etc.) and Contractor profit necessary to complete the services pursuant to the terms of the subsequent Agreement. All documents and reports requested in regard to this RFP, including but not limited to reports, service reviews, cost estimates, distribution reports, QC reports, and price proposals shall be provided at no additional cost to the Fire Department. The Contractor shall keep its submission of cost and pricing data current until the Agreement has been completed. If the Contractor refuses to submit the required data to support the price, the ACCO shall not accept the price.
- c. The Proposer shall submit an all-inclusive Fixed Burdened rate per title hour to furnish all labor and materials required to complete the work.
- d. The Contractor is to submit a separate proposal and supporting documentation may be included. Prices must remain fixed for the term of this contract including optional years. An authorized officer of the firm must sign this price proposal.
- e. The prices shall remain fixed for the duration of the contract and shall not be subject to any additions, mark-ups, percentage multipliers, or cost of living increases.

B. Proposal Submission

The Proposal Package should contain the following materials:

1. Technical Proposal:

Provide one (1) double-sided original, fifteen (15) copies, and two (2) CD-ROM electronic copies.

In a sealed envelope clearly marked as "Technical Proposal" to include:

- Proposal Cover Letter – Attachment A
- Technical Proposal
- Acknowledgement of Addenda – Attachment C
- Affirmation of Taxes Paid – Attachment D

2. Subcontractor Utilization Plan/Waiver Application – Attachment G:

Provide one (1) original and ten (10) copies.

In a separate sealed envelope clearly marked as "Subcontractor Utilization Plan"

- Subcontractor Utilization Plan/Waiver Application – Attachment G

C. Proposal Delivery

Each proposal package must be received by **April 12, 2007** no later than **4:00 PM** at the following address:

Fire Department of the City of New York
9 MetroTech Center, 5W-14K
Brooklyn, N.Y., 11201
Attention: Malissa Smith
Contract Officer

The Proposer's company name and address, the Title and PIN # of this RFP, and the name and telephone number of the Proposer's Contact Person shall be on the outside package label.

All proposals received in Room 5W-14-K will be time stamped and issued a receipt by the Contract Development Unit. Only Contract Development Unit receipts and time stamps will be accepted as proof of delivery; U.S. mail or messenger delivery receipts will not be

accepted. A copy of the Contract Development Unit receipt will be attached to the proposal package and a duplicate provided to the messenger, if hand delivered.

The proposer is responsible for timely delivery of the proposal package to Room 5W-14-K. The Fire Department is not responsible for any delays in delivery of the proposal. This includes, but is not limited to, delays due to outside mail, delivery, and messenger services; internal security delays; transportation delays; or delays due to Fire Department internal mail distribution services.

Proposers are advised that on occasion security delays at the building entrance can exceed one (1) hour. Proposers delivering the proposals shall be in possession of valid identification that will be retained at the security desk until the proposer exits the building. This identification can be a driver's license, passport, employee ID card, credit card, bankcard, or immigration card (green card).

Proposers utilizing overnight delivery services should note that internal mail distribution personnel deliver packages directly to the Fire Department mailroom for distribution. Packages that are received in the mailroom in the late afternoon may not be distributed until the following day; therefore, if overnight services are utilized, proposers should allow at least two (2) business days for delivery.

Any proposal received in Room 5W-14-K of the Contracts Development Unit after the time and date set for receipt of proposals is late and may be accepted only in the manner set forth in Section 3-03(f)(5) of the Procurement Policy Board Rules.

SECTION V – PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Selection Process

All proposals accepted by the Fire Department will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined to be non-responsive will be rejected. The Fire Department's Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below. The Fire Department reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as the Agency deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, the Agency reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the Proposer's initial proposal should contain its best technical and price terms.

Evaluation of the technical proposals shall be based on a combination of the responsiveness of the proposal, acceptability of the proposed system, and the qualifications of the proposer as outlined below:

1. A proposal shall be deemed responsive only if all of the requirements of the RFP have been met.
2. The proposer must demonstrate satisfactory financial resources, stability, and project qualifications.

B. Proposal Evaluation Criteria

1. The criteria and the relative weight of each that will be utilized to evaluate proposals are:
 - a. The quantity and quality of the Proposer's successful relevant qualifications and experience providing construction management services. (Weight of 35)
 - b. Demonstrated level of organizational capability. (Weight of 20)
 - c. The Proposer's demonstrated quality of proposed approach and methodology. (Weight of 45)
2. After completion of the technical evaluations, the Evaluation Committee may require oral presentations from qualified proposers for further evaluation. Based on those presentations, the Evaluation Committee may amend their initial technical scores.
 - a. At the sole option of the FDNY and if the evaluation committee deems it necessary, respondents will be required to present a 90 to 120 minutes overview of their solution at Headquarters.

- b. The oral presentation shall be followed by a question and answer session. A total maximum of 2 hours in duration will be set-aside for each oral session.
- c. Oral and/or Visual presentations shall not include any new information that is not included in the written proposal. The purpose of the oral/visual presentation shall be solely to clarify the information contained in the written proposal.

NOTE: As further described below, it is important that no price information be disclosed in the Technical Proposal or the Oral Presentation/Interview.

Respondents that disclose any price information (other than in the price proposal) will be declared non-responsive to this solicitation. Respondents shall be solely held responsible for ensuring that the price proposal information is contained in a separate sealed envelope and that no price information is disclosed to any City individual during the Demonstration process.

D. Basis for Contract Award

The Fire Department will award a contract to the responsible proposer whose proposal is determined to be the highest quality and most advantageous to the City, taking into consideration the overall quality of the proposal as measured against the criteria set forth in this RFP and the successful negotiation of an appropriate fee. Such fee negotiation shall commence upon written notification and shall conclude not more than thirty (30) days after receipt of the fee proposal.

E. Contract Negotiations

The selected proposer will be invited to negotiate a contract with the City. The contents of the selected proposal, the General Provisions for Service Contracts, together with the RFP and any formal questions and answers generated during the proposal process, will be incorporated with and made part of the final contract as developed by the Fire Department. Should negotiations fail to result in a signed contract within thirty (30) days, the Fire Department reserves the right to terminate negotiations and select the proposer whose proposal is determined to be the next most advantageous to the City. The successful Contractor shall not disclose nor use any information contained in or received about this RFP or resulting contract without approval of the ACCO.

F. VENDEX and Supply and Services Information

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.

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 and VENDEX Certificate of No Change 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 to download the VENDEX Questionnaires and a Vendor's Guide to VENDEX or contact DDC's VENDEX Unit at 718-391-1565.

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

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.

SECTION VI – GENERAL INFORMATION TO PROPOSERS

A. Complaints. 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, Room 1005, 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.

B. Applicable Laws. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions 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 contacting the PPB at (212) 788-0010.

C. General Contract Provisions. Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A—General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.

D. Contract Award. 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 Small Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Certificates of No Change; 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 the Local Based Enterprises program and its implementation rules.

E. Proposer Appeal Rights. 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.

F. Multi-Year Contracts. Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.

G. Prompt Payment Policy. Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

H. Prices Irrevocable. 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 a cost breakdown of the proposed price, best and final offers and/or the conduct of negotiations.

I. Confidential, Proprietary Information or Trade Secrets. Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of 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. All information not so identified may be disclosed by the City.

J. RFP Postponement/Cancellation. The Agency reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.

K. Proposer Costs. Proposers will not be reimbursed for any costs incurred to prepare proposals.

L. Charter Section 312(a) Certification. [IF APPLICABLE]

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.

[Commissioner] [Agency Chief Contracting Officer]

Date

ATTACHMENT A - PROPOSAL COVER LETTER

RFP TITLE: OWNER'S REPRESENTATIVE SERVICES FOR THE DESIGN AND CONSTRUCTION OF FDNY FIREBOATS

PIN #: 057070002297

Proposer:

Name: _____

Address: _____

Tax Identification #: _____

Proposer's Contact Person:

Name: _____

Title: _____

Telephone #: _____ **Email:** _____

Proposer's Authorized Representative:

This is to certify that this proposal is a Contractor offer.

Name: _____

Title: _____

Signature: _____

Date: _____

Is the response printed on both sides, on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in the instructions to this solicitation?

Yes

No

ATTACHMENT B – PRICE PROPOSAL FORM

**CONSTRUCTION MANAGEMENT SERVICES FOR INFRASTRUCTURE UPGRADES, REPAIRS,
AND LIMITED RENOVATION AND REHABILITATION OF PROJECTS AT VARIOUS FDNY
FACILITIES WITHIN NEW YORK CITY**



**FIRE DEPARTMENT OF THE CITY OF NEW YORK
Attachment B**



Price Proposal Form (For Submission Upon Request ONLY)

**CONSTRUCTION MANAGEMENT SERVICES FOR INFRASTRUCTURE
UPGRADES, REPAIRS, AND LIMITED RENOVATION AND REHABILITATION
OF PROJECTS AT VARIOUS FDNY FACILITIES WITHIN NEW YORK CITY**

Pin No. 05706002902

Year 1

A. Construction Management Services

<u>CM Staff Title</u>	<u>Estimated Staff Hours</u>		<u>Hourly Billing Rate</u>	=	<u>Total Amount Per Title</u>
Project Manager	1,800	X	\$ _____	=	\$ _____.
Resident Engineer	6,000	X	\$ _____	=	\$ _____.
Project Design Reviewer	500	X	\$ _____	=	\$ _____.
Estimator	500	X	\$ _____	=	\$ _____.
Mechanical Inspector	1,000	X	\$ _____	=	\$ _____.
Electrical Inspector	1,000	X	\$ _____	=	\$ _____.
Structural Inspector	300	X	\$ _____	=	\$ _____.
A. Total Construction Management Services Costs Year 1					= \$ _____.

Note: The estimated staff hours listed and estimated annual costs of construction noted above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this contract.

Submitted by: _____

Print Name: _____
Name of Company

Signature: _____

Title: _____

Date: _____



**FIRE DEPARTMENT OF THE CITY OF NEW YORK
Attachment B**



Price Proposal Form (For Submission Upon Request ONLY)

**CONSTRUCTION MANAGEMENT SERVICES FOR INFRASTRUCTURE
UPGRADES, REPAIRS, AND LIMITED RENOVATION AND REHABILITATION
OF PROJECTS AT VARIOUS FDNY FACILITIES WITHIN NEW YORK CITY**

Pin No. 05706002902

Year 2

A. Construction Management Services

<u>CM Staff Title</u>	<u>Estimated Staff Hours</u>		<u>Hourly Billing Rate</u>	=	<u>Total Amount Per Title</u>
Project Manager	1,800	X	\$ _____	=	\$ _____.
Resident Engineer	6,000	X	\$ _____	=	\$ _____.
Project Design Reviewer	500	X	\$ _____	=	\$ _____.
Estimator	500	X	\$ _____	=	\$ _____.
Mechanical Inspector	1,000	X	\$ _____	=	\$ _____.
Electrical Inspector	1,000	X	\$ _____	=	\$ _____.
Structural Inspector	300	X	\$ _____	=	\$ _____.
A. Total Construction Management Services Costs Year 2				=	\$ _____.

Note: The estimated staff hours listed and estimated annual costs of construction noted above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this contract.

Submitted by: _____

Print Name: _____
Name of Company

Signature: _____

Title: _____

Date: _____



**FIRE DEPARTMENT OF THE CITY OF NEW YORK
Attachment B**



Price Proposal Form (For Submission Upon Request ONLY)

**CONSTRUCTION MANAGEMENT SERVICES FOR INFRASTRUCTURE
UPGRADES, REPAIRS, AND LIMITED RENOVATION AND REHABILITATION
OF PROJECTS AT VARIOUS FDNY FACILITIES WITHIN NEW YORK CITY**

Pin No. 05706002902

Year 3

A. Construction Management Services

<u>CM Staff Title</u>	<u>Estimated Staff Hours</u>		<u>Hourly Billing Rate</u>	=	<u>Total Amount Per Title</u>
Project Manager	1,800	X	\$ _____	=	\$ _____.
Resident Engineer	6,000	X	\$ _____	=	\$ _____.
Project Design Reviewer	500	X	\$ _____	=	\$ _____.
Estimator	500	X	\$ _____	=	\$ _____.
Mechanical Inspector	1,000	X	\$ _____	=	\$ _____.
Electrical Inspector	1,000	X	\$ _____	=	\$ _____.
Structural Inspector	300	X	\$ _____	=	\$ _____.
A. Total Construction Management Services Costs Year 3					= \$ _____.

Note: The estimated staff hours listed and estimated annual costs of construction noted above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this contract.

Submitted by: _____

Print Name: _____
Name of Company

Signature: _____

Title: _____

Date: _____



**FIRE DEPARTMENT OF THE CITY OF NEW YORK
Attachment B**



Price Proposal Form (For Submission Upon Request ONLY)

**CONSTRUCTION MANAGEMENT SERVICES FOR INFRASTRUCTURE
UPGRADES, REPAIRS, AND LIMITED RENOVATION AND REHABILITATION
OF PROJECTS AT VARIOUS FDNY FACILITIES WITHIN NEW YORK CITY**

Pin No. 05706002902

Year 4

A. Construction Management Services

<u>CM Staff Title</u>	<u>Estimated Staff Hours</u>		<u>Hourly Billing Rate</u>	=	<u>Total Amount Per Title</u>
Project Manager	1,800	X	\$ _____	=	\$ _____.
Resident Engineer	6,000	X	\$ _____	=	\$ _____.
Project Design Reviewer	500	X	\$ _____	=	\$ _____.
Estimator	500	X	\$ _____	=	\$ _____.
Mechanical Inspector	1,000	X	\$ _____	=	\$ _____.
Electrical Inspector	1,000	X	\$ _____	=	\$ _____.
Structural Inspector	300	X	\$ _____	=	\$ _____.
A. Total Construction Management Services Costs Year 4					= \$ _____.

Note: The estimated staff hours listed and estimated annual costs of construction noted above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this contract.

Submitted by: _____

Print Name: _____
Name of Company

Signature: _____

Title: _____

Date: _____



**FIRE DEPARTMENT OF THE CITY OF NEW YORK
Attachment B**



Price Proposal Form (For Submission Upon Request ONLY)

**CONSTRUCTION MANAGEMENT SERVICES FOR INFRASTRUCTURE
UPGRADES, REPAIRS, AND LIMITED RENOVATION AND REHABILITATION
OF PROJECTS AT VARIOUS FDNY FACILITIES WITHIN NEW YORK CITY**

Pin No. 05706002902

Year 5

A. Construction Management Services

<u>CM Staff Title</u>	<u>Estimated Staff Hours</u>		<u>Hourly Billing Rate</u>	=	<u>Total Amount Per Title</u>	
Project Manager	1,800	X	\$ _____	=	\$ _____.	
Resident Engineer	6,000	X	\$ _____	=	\$ _____.	
Project Design Reviewer	500	X	\$ _____	=	\$ _____.	
Estimator	500	X	\$ _____	=	\$ _____.	
Mechanical Inspector	1,000	X	\$ _____	=	\$ _____.	
Electrical Inspector	1,000	X	\$ _____	=	\$ _____.	
Structural Inspector	300	X	\$ _____	=	\$ _____.	
A. Total Construction Management Services Costs Year 5					=	\$ _____.
<u>Total Years 1 + 2 + 3 + 4 + 5</u>					=	\$ _____.

Note: The estimated staff hours listed and estimated annual costs of construction noted above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this contract.

Submitted by: _____

Print Name: _____
Name of Company

Signature: _____

Title: _____

Date: _____

ATTACHMENT C - ACKNOWLEDGEMENT OF ADDENDA

<u>RFP TITLE</u>	<u>PIN #</u>
OWNER'S REPRESENTATIVE SERVICES	057070002297

INSTRUCTIONS: COMPLETE PART I, OR PART II WHICH EVER IS APPLICABLE

PART 1: LISTED BELOW ARE THE DATES OF ISSUE FOR EACH ADDENDUM RECEIVED IN CONNECTION WITH THIS RFP.

ADDENDUM #1, DATED _____, 20 _____

ADDENDUM #2, DATED _____, 20 _____

ADDENDUM #3, DATED _____, 20 _____

ADDENDUM #4, DATED _____, 20 _____

ADDENDUM #5, DATED _____, 20 _____

ADDENDUM #6, DATED _____, 20 _____

ADDENDUM #7, DATED _____, 20 _____

ADDENDUM #8, DATED _____, 20 _____

ADDENDUM #9, DATED _____, 20 _____

ADDENDUM #10, DATED _____, 20 _____

PART II:

_____ NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS RFP.

PROPOSER (NAME) _____

PROPOSER (SIGNATURE) _____

PRINT NAME _____

TITLE _____

DATE _____

ATTACHMENT D - AFFIRMATION OF TAXES PAID

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except

Full name of Proposer or Bidder _____
Address _____
City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A - Individual or Sole proprietorship*
SOCIAL SECURITY NUMBER

B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION

C - Corporation
EMPLOYER IDENTIFICATION

By _____
SIGNATURE

TITLE

If a corporation place seal here
Must be signed by an officer or duly authorized representative.

Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City, a means of identifying of business which seek City contracts.

ATTACHMENT E - DEFINITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS

- A. **“A-E”** shall mean an individual or organization providing Architectural and Engineering services for small, medium or large projects.
- B. **“Agency Chief Contracting Officer” (“ACCO”)** shall mean the person designated by the Commissioner to exercise such powers and duties with respect to procurement as set forth in the Procurement Policy Board Rules.
- C. **“Agreement”** shall mean this Agreement as the same may be amended, modified or supplemented from time to time in accordance with the terms of this Agreement.
- D. **“City”** shall mean the City of New York.
- E. **“Commissioner”** shall mean the Commissioner of the Fire Department, or his duly authorized representative designated in writing by the Commissioner.
- F. **“Construction Documents”** shall mean the final plans, drawings and specifications and all modifications thereto prepared by consultant(s) engaged by the Department and approved in writing by the Commissioner or his duly authorized representative.
- G. **“Contractor”** shall mean the party providing Construction Management Services, which shall include full or partial rehabilitation and renovation for small, medium, or large projects.
- H. **“CM”** shall mean the Contractor providing Construction Management and Construction Contractor Services as defined herein.
- I. **“Drawings”** shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the Work as detailed and designated in the Construction Documents.
- J. **“FDNY Authorized Representative”** shall mean a Fire Department employee designated by the Commissioner.
- K. **“Final Acceptance”** shall mean the final written acceptance of all Work required hereunder, as determined by the FDNY Authorized Representative.
- L. **“Fire Department Project Manager”** shall mean a FDNY employee designated by the Assistant Commissioner of Support Services to coordinate, inspect, approve and monitor the services of the Contractor pursuant to this Agreement.

- M. **“Holidays”** means New Year’s Day, Martin Luther King, Jr. Day, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day.
- N. **“Notice to Proceed”** shall mean the written notification to the Contractor to commence work.
- O. **“Project”** shall mean a summary of required Construction Management and Construction Contractor services for each project and defines the uniqueness of a particular project.
- P. **“Project Manager”** shall mean a Department employee(s) designated by the FDNY to coordinate and monitor the services of the Contractor pursuant to this Agreement.
- Q. **“Shop Drawing”** shall mean any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer’s drawings or other written or graphic materials which illustrate any portion of the work.
- R. **“Specifications”** shall mean all of the directions, requirements and standards of performance applied to the Work as detailed and designated in the Construction Documents.
- S. **“Staffing Plan”** shall mean the proposed staffing organization for a Project to include the employee title, estimated hours per project phase, resume(s), and certification as to the employee status as a current employee of the Contractor and assurance that the individual shall be assigned to the Project for the entire duration thereof.
- T. **“Substantial Completion”** shall mean the written determination by the Authorized FDNY Representative that all required Work is substantially complete.
- U. **“Unavoidable Delay”** shall mean any delay or obstruction whatsoever in the Work resulting from any act or event which has had (or may reasonably be expected to have) a material adverse effect on the Contractor’s ability to perform its obligations under this Agreement, if such act or event is beyond the reasonable control of the Contractor and such act or event was not (and would not have been) separately or concurrently caused by a negligent or willful act of omission the Contractor and/or could have been prevented by reasonable actions on the Contractor’s part. Unavoidable Delay shall include without limitation:
- i. acts of God;
 - ii. unforeseeably severe weather conditions;
 - iii. fire, earthquake, explosion, landslide, lightening or flood;
 - iv. epidemic;

- v. strikes or lookouts;
- vi. riots, civil disturbance, insurrection, enemy action or war;
- vii. injunctions or orders of any Government entity;
- viii. embargoes or blockades.

V. **“Work”** shall mean everything expressly or implicitly required to be furnished and done by the Contractor for the Project pursuant to this Agreement, and shall include both Contract Work and Extra Work.

ATTACHMENT F - CONFIDENTIALITY

The Contractor acknowledges that all records, information or data, which it may have access to, examine, prepare, maintain or have custody of and deliver hereunder, are confidential records. ("Confidential Information"). All Confidential Information is the property of the Fire Department, and the Contractor would not at any time during the term of the Agreement, or thereafter, make any disclosure or statements or release to any third party any Confidential Information without the prior written approval of the Fire Department.

The obligation to maintain Confidential Information would include the duty to comply with all Federal, State and local laws, rules and regulations. The Contractor agrees that it will instruct its officers, employees, and agents, to maintain the confidentiality of any and all Confidential Information.

Upon expiration or termination of the Agreement, the Contractor would return to the Department any and all Confidential Information in the possession of the Contractor or its subcontractors, and permanently delete any and all Confidential Information maintained in any electronic form by the Contractor or its subcontractors.

A breach of this section would constitute a material breach of the Agreement for which the FDNY may terminate the Agreement. The FDNY reserves any and all other rights and remedies in the event of unauthorized disclosure.

License for Contractor Software and Third Party Software

- a. The Contractor shall provide the Department with perpetual and nonexclusive licenses for each Contractor software product and third party software product provided pursuant to this solicitation. The Contractor represents and warrants that it is authorized to provide all of the Contractor software and third party software products, and, if necessary, to customize the Contractor and third party software products to be provided under the Agreement, without violating any intellectual property, trade secret, or confidentiality rights of the third parties whose software is being provided and/or customized hereunder or any such rights of any third parties.
- b. **Warranties of Title**
 1. The Contractor represents and warrants that the Copyrightable Materials: (a) are wholly original material not published elsewhere (except for material that is in the public domain); (b) do not violate any copyright law; (c) do not constitute defamation or invasion of the right of privacy or publicity, and (d) are not an infringement of any

kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor represents and warrants that it has obtained all necessary permissions and clearances, in writing, for the use of such non-original material, copies of which shall be provided to the FDNY upon execution of an Agreement.

c. **Intellectual Property Indemnification**

1. The Contractor shall defend, indemnify and hold the FDNY harmless from and against any and all claims, suits, damages, judgments, liabilities, costs and expense, including reasonable attorneys' fees, to which it may be subject because of or related to any claim that the Copyrightable Materials, as applicable, infringes or violates the copyright, trademark, or any other property or personal right of any third party. This indemnification shall survive the termination or expiration of the Agreement. This indemnification provision shall not be limited in any way by the Contractor's obligations to obtain insurance as provided under the Agreement. Furthermore, Contractor shall defend and settle at its sole expense all suits or proceedings brought against Contractor arising out of the foregoing.

d. **Vendor Induced Inhibiting Code**

1. The Contractor shall not include any Vendor Induced Inhibiting Code (or VIIC) or any other inhibitor on reports and data submitted and provided to the City under this Agreement. VIIC is defined as any deliberately included application or system code that will degrade performance, result in inaccurate data, deny accessibility, or adversely effect, in any way, programs or data or use of the system.
2. The Contractor agrees not to include any imbedded code or other schemes that will limit the ability of the FDNY to select a qualified vendor or its own personnel to maintain the system in the event the City is required to rely on access to the source code to maintain the CAD system.

**ATTACHMENT G – MINORITY-OWNED AND WOMEN-OWNED BUSINESS
ENTERPRISES (M/WBE) (NOTICE AND SCHEDULE B)**

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

Local Law No. 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.

If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise ("M/WBE") program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "Subcontractor Utilization Plan"), and are detailed below.

The Contractor must comply with all applicable M/WBE requirements for this Contract.

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 B, Part I to this Contract (see Page 1, line (1)).

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 for construction and professional services.

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 10 below. To apply for the a full or partial waiver of the **Target Subcontracting Percentage**, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at smithma@fdny.nyc.gov or via facsimile at **718-999-0177**. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The **Subcontractor Participation Goals** established for this Contract are set forth on Schedule B, Part I to this Contract (see Page 1, line (2) and/or line (3)).

The **Subcontractor Participation Goals** represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under \$1 million.

3. If **Subcontractor 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 **Subcontractor Participation Goals**, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 11 below.

4. If **Subcontractor Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, Part II Subcontractor Utilization Plan (see Page 2-3) 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 general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor 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 10 below.

THE BIDDER/PROPOSER MUST FULLY COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). BIDS/PROPOSALS WHICH DO NOT INCLUDE A COMPLETED SUBCONTRACTOR UTILIZATION PLAN WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE SUBCONTRACTOR UTILIZATION PLAN (SCHEDULE B, PART II) INDICATES THAT THE BIDDER/PROPOSER DOES NOT INTEND TO AWARD THE TARGET SUBCONTRACTING PERCENTAGE, THE BID/PROPOSAL WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS THE AGENCY HAS GRANTED A WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE (SCHEDULE B, PART III).

5. Where a Subcontractor 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. M/WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/getcertified, by emailing DSBS at MWBE@sbs.nyc.gov, by calling the DSBS certification hotline at (212) 513-6311, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS (as indicated above) in order to seek certification.

7. Where a Subcontractor 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.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's Subcontractor 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 Subcontractor Utilization Plan in accordance with Local Law 129 and Part A, Section 11 below.

9. Where a Subcontractor 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.

10. 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 Subcontractor 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 Subcontractor 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.

11. Modification of Subcontractor Utilization Plan. A Contractor may request a modification of its Subcontractor Utilization Plan (**Subcontractor Participation Goals**) after award of this Contract. The Agency may grant such request if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Subcontractor Participation Goals**. 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 WBEs 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 Subcontractor Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (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 WBEs.

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

12. If **Subcontractor 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 Subcontractor Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the Subcontractor Utilization Plan.
2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.
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.
5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required **Subcontractor Participation Goals**.

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 Subcontractor 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 Subcontractor 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 Subcontractor Utilization Plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a Subcontractor 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.

SCHEDULE B – Subcontractor Utilization Plan – Part I: Agency’s Target

This page to be completed by contracting agency

Contract Overview					
Pin #	057060002902		FMS Project ID#:		
Project Title	Construction Management Services for Infrastructure Upgrades, Repairs, and Renovation and Rehabilitation of Projects at Various FDNY Facilities within New York City				
Contracting Agency	Fire Department				
Agency Address	9 MetroTech Center	City	Brooklyn	State	NY Zip Code 11201
Contact Person	Malissa Smith	Title	Contract Officer		
Telephone #	718.999.2845	Email	smithma@fdny.nyc.gov		

Project Description *(attach additional pages if necessary)*

The Fire Department's goals and objectives for this solicitation are to obtain the services of a Construction Management Services Contractor for the purposes of providing uniform high quality construction project planning, management, and execution of infrastructure upgrades, repairs, and renovation and rehabilitation of projects at various FDNY Facilities throughout the City of New York.

(1) ✓ Target Subcontracting Percentage

Percentage of total contract dollar value that agency estimates will be awarded to subcontractors in amounts under \$1 million for construction and professional services.

10 %

Subcontractor Participation Goals*
Complete and enter total for each Construction or Professional Services, or both (if applicable)

Group	Construction	Professional Services
Black American	NA %	9.0 %
Hispanic American	NA %	5.0 %
Asian American	NA %	No Goal
Caucasian Female	No Goal	16.5 %
Total Participation Goals	(2) NA %	(3) 30.5 %

*Note: for this procurement, based on a limited number of likely subcontracting opportunities, individual ethnicity and gender goals are not specified. Bidders/proposers may meet the Total Participation Goal through subcontracts with vendors certified in one or more of the ethnicity or gender categories. For reference, the Citywide Subcontractor Participation Goals for construction service are 12.63% Black American, 9.47% Asian American and 9.06% Hispanic American. For Professional Services, the Citywide Subcontractor Participation Goals are 9% Black American, 5% Hispanic American and 16.5% Caucasian Female.

SCHEDULE B – Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan

PIN #: 057060002902

This page and the next (Part II herein) are to be completed by the bidder/proposer. NOTE: Bids/proposals which do not include a completed subcontractor utilization plan (Part II herein) will be deemed to be non-responsive, unless a full waiver of the target subcontracting percentage is granted (Part III herein).

Section I: Prime Contractor Contact Information

Tax ID # _____ FMS Vendor ID # _____
Business Name _____ Contact Person _____
Address _____
Telephone # _____ Email _____

Section II: General Contract Information

1. Define the industry in which work is to be performed.

- **Construction** includes all contracts for the construction, rehabilitation, and/or renovation of physical structures. This category does include CM/Build as well as other construction related services such as: demolition, asbestos and lead abatement, and painting services, carpentry services, carpet installation and removal, where related to new construction and not maintenance.
- **Professional Services** are a class of services that typically require the provider to have some specialized field or advanced degree. Services of this type include: legal, management consulting, information technology, accounting, auditing, actuarial, advertising, health services, pure construction management, environmental analysis, scientific testing, architecture and engineering, and traffic studies, and similar services.

a. Type of work on Prime Contract (Check one):

- Construction
 Professional Services

b. Type of work on Subcontract (Check all that apply):

- Construction Other
 Professional Services

2. What is the expected percentage of the total contract dollar value that you expect to award to all subcontracts? _____ %

3. Will you award subcontract(s) in amounts below \$ 1 million for construction and/or professional services contracts within the first 12 months of the notice to proceed on the contract? Yes No

Schedule B – Part II continued

Section III: Subcontractor Utilization Summary

IMPORTANT: *If you do not anticipate that you will subcontract at the target level the agency has specified, because you will perform more of the work yourself, you must seek a waiver of the Target Subcontracting Percentage by completing p. 4).*

Step 1: Calculate the percentage (of your total bid) that will go towards subcontracts under \$1M for construction and/or professional services	Subcontracts under \$1M (4) (construction/professional services)	Total Bid/Proposal Value	Calculated Target Subcontracting Percentage
	\$ _____	÷ \$ _____	x 100 = _____ %

- **Subcontracts under \$1M (construction/professional services):** Enter the value you expect to award to subcontractors in dollars for amounts under \$1 million for construction and/or professional services. This value defines the amount that participation goals apply to, and will be entered into the first line of Step 2.
- **Total Bid/Proposal Value:** Provide the dollar amount of the bid/proposal.
- **Calculated Target Subcontracting Percentage:** The percentage of the total contract dollar value that will be awarded to one or more subcontractors for amounts under \$1 million for construction and/or professional services. **This percentage must equal or exceed the percentage listed by the agency on page 1, at line (1).**

! Important: The “Calculated Target Subcontracting Percentage” **MUST** equal or exceed the Target Subcontracting Percentage listed by the agency on Page 1, Line (1) or the bid/proposal will be deemed non-responsive.

Step 2:
 Calculate value of subcontractor participation goals

		Subcontracts under \$1M (construction/professional services)	
a. Copy value from Step 1, line (4) – the total value of all expected subcontracts under \$1M for construction and/or professional services	\$ _____		
b. <ul style="list-style-type: none"> • From line a. above, allocate the dollar value of “Subcontracts under \$1M” by Construction and Professional Services, • If all subcontracts under \$1M are in one industry, enter ‘0’ for the industry with no subcontracts. • Amounts listed on these lines should add up to the value from line a. 	Construction	Professional Services	
c. <ul style="list-style-type: none"> • Subcontracts under \$1M by Industry \$ _____ • For Construction enter percentage from line (2) from Page 1. • For Professional Services enter percentage from line (3) from Page 1. • These Percentages must be copied from the Agency Plan, or the bid/proposal will be 	x _____ %	\$ _____	x _____ %
d. Value of Total Participation Goals	\$ _____	\$ _____	

Schedule B – Part II continued

Step 3:

- ✓ **Subcontracts in Amounts Under \$1 M Scope of Work – Construction**

Enter brief description of type(s) of subcontracts in amounts under \$1M anticipated, by type of work, not by name of subcontractor

- ✓ **Subcontracts in Amounts Under \$1 M Scope of Work – Professional Services**

Enter brief description of type(s) of subcontracts in amounts under \$1M anticipated, by type of work, not by name of subcontractor

Section IV: Vendor Certification

I hereby 1) acknowledge my understanding of the M/WBE requirements as set forth herein and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder; 2) affirm that the information supplied in support of this subcontractor utilization plan is true and correct; 3) agree, if awarded this Contract, to comply with the M/WBE requirements of this Contract and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this contract; and 4) agree, if awarded this contract, to make all reasonable, good faith efforts to attain the Target Subcontracting Percentage as specified by the Agency, and to solicit and obtain the participation of M/WBEs so as to meet the required Subcontractor Participation Goals.

Signature _____

Date _____

Print Name _____

Title _____

SCHEDULE B – PART III – REQUEST FOR WAIVER OF TARGET SUBCONTRACTING PERCENTAGE

PIN #: 057060002902

Contract Overview

Tax ID # _____ FMS Vendor ID # _____

Business Name _____

Contact Name _____ Telephone # _____ Email _____

Type of Procurement Competitive Sealed Bids Other Bid/Response Due Date _____

PIN # (for this procurement) _____ Type of work on Prime Contract _____ Type of work on Subcontract (Check all that apply): _____

(Check one):

Construction

Professional Services

Construction

Professional Services

Other

SUBCONTRACTING as described in bid/solicitation documents (Copy this % figure from Schedule B, Part I, line 1)

_____ % of the total contract value anticipated by the agency to be subcontracted for construction/professional services subcontracts valued below \$1 million (each)

ACTUAL SUBCONTRACTING as anticipated by vendor seeking waiver

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for construction/professional services subcontracts valued below \$1 million (each)

Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)

Vendor does not subcontract construction/professional services, and has the capacity and good faith intention to perform all such work itself.

Vendor subcontracts some of this type of work but at lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract.

Other _____

References

List 3 most recent contracts/subcontracts performed for NYC agencies (if any)

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

List 3 most recent contracts/subcontracts performed for other agencies/entities

(complete ONLY if vendor has performed fewer than 3 NYC contracts)

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____

Manager at agency/entity that hired vendor (Name/Phone No.) _____

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____

Manager at agency/entity that hired vendor (Name/Phone No.) _____

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____

Manager at agency/entity that hired vendor (Name/Phone No.) _____

VENDOR CERTIFICATION: I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith.

Signature: _____

Date: _____

Name: _____

Title: _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL

Signature: _____

Date: _____

CITY CHIEF PROCUREMENT OFFICER APPROVAL

Signature:

Date:

APPENDIX A – NEW YORK CITY TERMS AND CONDITIONS

NYC General Terms and Conditions

THIS AGREEMENT, made and entered into this _____ day of _____ in the year two thousand and _____ by and between the City of New York, party of the first part, by the Commissioner of the Fire Department of the City of New York, and _____ Contractor, party of the second part.

That the parties hereto in consideration of the mutual agreements herein contained, hereby agree as follows:

ARTICLE 1. THE CONTRACT

Except for titles, subtitles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this contract.

1. Information for Bidders;
2. The Advertisement and Proposal for Bids
3. The Bid;
4. The Agreement;
5. The Specification;
6. The Contract Drawings;
7. All Addenda issued by the Commissioner prior to the receipt of bids;
8. All provisions required by law to be inserted in this contract, whether actually inserted or not;
9. The Notice of Award;
10. Payment and Performance Bonds;
11. Notice to Proceed with the work.

ARTICLE 2. DEFINITIONS

1. "**Addendum**" or "**Addenda**" shall mean the additional contract provisions issued in writing by the Commissioner prior to the receipt of bids.
2. "**Agency**" shall mean a city, county, borough or other office, position, the Fire Department, division, bureau, board of commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.
3. "**City**" shall mean the City of New York, party of the first part.
4. "**City Holidays**" shall include the following days: New Year's Day, Martin Luther King Day, President's Day, George Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving Day, and Christmas Day.
5. "**Commissioner**" shall mean the Commissioner of the Fire Department of the City of New York, or his duly authorized representative designated in writing by the Commissioner.

6. "**Comptroller**" shall mean the Comptroller of the City of New York.
7. "**Contract**" or "**Contract Documents**" shall mean each of the various parts of the contract referred to in Article I hereof, both as a whole and severally.
8. "**Contractor**" shall mean the party of the second part thereto, whether corporation, firm or individual, or any combination thereof, and its, their or his successors, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be submitted in the place of the party of the second part under this contract. The Contractor shall also be referred to as "it", whether such Contractor is an individual, partnership or corporation.
9. "**Contract Drawings**" shall mean only those drawings specifically entitled as such and listed in the specifications or in any addendum, or any detailed drawings furnished by the Commissioner, pertaining or supplemental thereto.
10. "**Contract Work**" shall mean everything required to be furnished and done by the Contractor by any one or more of the parts of the contract referred to I Article I hereof, except extra work as hereinafter defined; it being understood that, in case of any inconsistency in or between any part or parts of this contract, the Engineer shall determine which shall prevail.
11. "**Department**" shall mean the Fire Department of the City of New York acting by and through the Commissioner thereof, or his duly authorized representative.
12. "**Engineer**" or "**Architect**" shall mean the person so designated in writing by the Commissioner to act as such in relation to this contract, including a private Architect or Engineer as the case may be.
13. "**Extra Work**" shall mean work other than that required by the contract at the time of its execution.
14. "**Final Acceptance**" shall mean Final acceptance of the work by the Commissioner, as evidenced by his signature upon his certificate of completion & acceptance file in the Office of the Comptroller. Such acceptance shall be deemed to have taken the place as of the date so states in such certificate.
15. "**Law**" or "**Laws**" shall mean the Constitution of the State of New York, the New York City Charter, the New York City Administrative Code, a statute of the United States or of the State of New York, a local law of the City of New York, and any ordinance, rule or regulation having the force of law.
16. "**Site**" shall mean the area upon or I which the Contractor's operations are carried on, and such by the Engineer.
17. "**Specifications**" shall mean all of the directions, requirements and standards of performance applying to the work as hereinafter detailed and designated under specifications.
18. "**The Work**" shall mean everything required to be furnished and done by the Contractor under the contract, and shall include both contract work and extra work.

19. **“Agency Chief Contracting Officer”** shall mean the position delegated authority by the Fire Commissioner to organize and supervise the procurement activity of the Fire Department.

ARTICLE 3. SCOPE OF SERVICES

The Contractor agrees to perform all the services described in the Specifications attached hereto as Section III of the Request for Proposal.

ARTICLE 4. PERIOD OF PERFORMANCE

The period of performance of this contract shall commence of the date shown in the New York City Fire Department's order to commence work letter.

ARTICLE 5. PAYMENT

1. The City agrees to pay and the Contractor agrees to accept, as full consideration for the complete and satisfactory performance of the services required herein, the amount set forth in this bid.

Payment(s) shall be made within 30 days after the filing with the Comptroller of voucher(s) for such payment(s). The Commissioner shall file such voucher(s) with the Comptroller within 30 days after the receipt of invoices for such payment(s). In the event any items in the billing may be questioned or disputed by the Commissioner, these items may be deleted from the billing until their resolution and the remainder of the billing shall be processed with the above period(s).

2. The Contractor shall submit numbered invoices for payment in accordance with the payment schedule established in Part III. Such invoices shall set forth the services for which payment is requested, and approval thereof by the Department shall be a prerequisite to payment. All payments shall be subject to such provisions for set off as may be set forth in this Agreement and in the Specifications attached hereto.

All invoices are to be mailed within three (3) weeks after services are performed to the following address: **New York City Fire Department - Fiscal Services, Attn: payment Processing: P.O Box 025-374, Brooklyn, New York 11201-0014. In addition it is the responsibility of the Contractor to provide the Department with the total billings to date on the invoice.**

3. Payments shall be made out of such monies as may be reserved by the Comptroller of the City of New York for the purpose herein provided.
4. This contract and all payments hereunder shall be subject to audit by the New York City Fire Department and post audit by the Comptroller of the City in accordance with the New York City Charter and Administrative Code.

PROMPT PAYMENT

The Prompt Payment provisions set forth in Section 4-06, of the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payments made under this contract. The provisions require the payment to contractors of interest on payments made after the required payment date except as set forth in subdivisions c(3) and d(2), (3), (4), and (5) of Section 4-06 of the Rules.

The Contractor must submit a proper invoice to receive payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit any invoice for each scheduled payment. Determinations of interest due will be made in accordance with the provisions of Section 4-06 of the Procurement Policy Board Rules and General Municipal Law 3-a.

PAYMENT

Upon 50% expenditure of the contract, the Contractor must notify in writing the invoice contact person indicated below, within five (5) business days. In addition, the Contractor must indicate the amount of the Fire Department expenditures to date under this contract. This expenditure amount must include the amount requested on that particular invoice.

Invoices must be sent in triplicate to:

**NEW YORK CITY FIRE DEPARTMENT - FISCAL SERVICES
ATTENTION: PAYMENT PROCESSING
P.O. BOX 025-374
BROOKLYN, NEW YORK 11201-0014**

ARTICLE 6. LIABILITY OF CONTRACTOR

1. GENERAL LIABILITY

- A. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person and for all damage to any property sustained during its operations and work 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.
- 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 any employee of the Contractor, either within or without the scope of his employment, or arising out of the 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.

2. PROTECTION OF CITY PROPERTY

- A. During performance and up to the date of final acceptance, the Contractor shall abide by the Department security procedures in effect at the premises where the work is performed. The Contractor must take all reasonable precautions to protect the property of the Department and others from damage, loss or theft resulting from his or his subcontractor's operations under this contract. At a minimum the following security procedures shall be implemented in all Department facilities, and the Contractor shall be under an absolute obligation to abide by these procedures during performance and up to date of final acceptance:

The Contractor shall notify the Commanding Officer, Housewatch or responsible Department employee when leaving the premises. In the event that Department employees are not present, the Contractor shall immediately call the Department Notification Desk advising that the premises will be vacated. The Contractor shall lock and secure the premises when Department employees are not present.

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 the Agreement, and caused, either directly or indirectly, by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel employees, 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, or to the extent that such property is consumed in the 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 such loss or damage.
- C. The Contractor agrees to indemnify the City and hold it harmless from any suits, liabilities, judgments, costs, and expenses, including attorney's fees due to any such loss or damage to any such City property described in sub-section 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.

3. **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 design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of the Agreement.

ARTICLE 7. BONDS, INSURANCE AND LIQUIDATED DAMAGES

1. **PERFORMANCE AND PAYMENT BONDS**

The Contractor shall, prior to or at the time of execution of this contract deliver to the City a performance bond and a payment bond, if such bonds are required, having as surety thereunder such surety company or companies as approved by the Comptroller. Such bonds shall be in the amount and in the form prescribed herein.

2. INSURANCE REQUIREMENTS

The Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid. The Contractor shall be solely responsible for payment of all premiums for insurance contributing to satisfaction of the contract requirements.

A. **WORKERS COMPENSATION AND EMPLOYEES LIABILITY**

- i) Worker's Compensation limits as required by the Labor Code of the State of New York (including occupational disease) and including the Other State Endorsement.
- ii) Employers Liability Insurance with limits of at least \$1,000,000 per accidents.

The **Contractor** and each **Subcontractor** shall provide Workers' Compensation Insurance in accordance with the **Laws** of the State of New York, and the United States Longshoremens' and Harbor Workers' Act where applicable, on behalf of all employees providing services under this **Contract**.

- a. Pursuant to Section 57 of the New York State Workers' Compensation **Law**, the **Contractor** shall have submitted to the NYC Fire Department the following as proof of Workers' Compensation and disability benefits coverage prior to the execution of this **Contract**.
 - i. C-105.21 – Statement for the NYC Fire Department that a Business **DOES NOT** require workers' compensation and/or disability benefits coverage; or
 - ii. C-105.2 – Certificate of Workers' Compensation Insurance (the business' insurance carrier will send this form to the government entity upon the business' request) Please Note: The State Insurance Fund provides its own version of this form, the U-26.3; or
 - iii. SI-12 – Certificate of Workers' Compensation Self-Insurance or GSI-105.2 – Certificate of Group Worker's Compensation Self-Insurance.

(Please Note: ACCORD forms are NOT acceptable proof of workers' compensation coverage.)

- B. **COMMERCIAL GENERAL LIABILITY ("CGL")** with a combined single limit for Bodily Injury, Personal injury and Property Damage of a least \$1,000,000 per accident and a minimum

aggregate of \$2,000,000. The limit may be provided through a combination of primary and umbrella/excess liability policies.

Coverage shall include the BROAD FORM COMPREHENSIVE LIABILITY ENDORSEMENT (GL-0404) (of the ISO or an equivalent). Coverage shall provide and encompass at least the following:

- i)* X, C, and U (explosion, collapse, and underground) hazards, where applicable;
- ii)* Independent Contractors;
- iii)* Blanket written contractual liability covering all indemnity agreements and indemnification;
- iv)* Products liability and completed operations, with the provision that coverage shall extend for a period of at least 12 (twelve) months from Project completion;
- v)* CGL coverage written on an occurrence form;
- vi)* Endorsement naming the City, its officers, officials and employees as an additional insured, and
- vii)* Waiver of Subrogation.

The policy shall contain no exclusions or endorsements, which are not acceptable to the City and shall be of a form and by an insurance company acceptable to the City.

- C. If required, Comprehensive Automobile Liability (including all owned, leased, hired and non-owned automobiles) with a combined single limit for Bodily Injury and Property Damage of at least \$1,000,000 per accident. The limit may be provided through a combination of primary and umbrella/excess liability policies.
- D. Umbrella and/or excess liability policies used to comply with CGL and/or Auto Liability limits shown above shall be warranted to be in excess of limits provided by primary CGL, Auto and Employers Liability.
- E. The Contractor shall furnish the City with Certificates of Insurance effecting coverage required by this clause. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Fire Department reserves the right to obtain complete certified copies of all required insurance policies at any time. The Certificates must provide for 30 days written notice prior to cancellation, non-renewal or material modification.

3. COMPREHENSIVE GENERAL, AUTOMOBILE AND EMPLOYERS LIABILITY

- A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations.
- B. The Contractor shall secure, pay for, and maintain Property Insurance necessary for protection against loss of owned, borrowed, or rented capital equipment and tools, including any tools owned by employees and any tools, equipment, staging, towers, and forms owned, borrowed or rented by the Contractor.

The requirement to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not obligate the City, or its agents and employees for any losses, and the City and its agents and employees shall have no such liability. The insurance policy for such Contractor shall include a waiver of subrogation as follows:

"It is agreed that in no event shall this insurance company have any right of recovery against the City".

- C. Any deductibles or self-insured retention must be declared to and approved by the Fire Department. At the option of the Fire Department, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the Fire Department, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.
- D. The City, its officers, officials and employees are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials and employees.
- E. The Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, and employees. Any other insurance or self-insurance maintained by the Fire Department, its officers, officials, and employees shall be in excess of and not contribute to the Contractor's insurance.
- F. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Fire Department, its officers, officials, and employees.
- G. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- H. Should the Contractor engage a subcontractor, the same conditions applicable to the Contractor under these Insurance Requirements shall apply to each subcontractor.
- I. The Contractor shall notify the City of any damage to the work or any accidents on the site **within twenty-four** hours of the occurrence. The twenty-four hour notice will presumably be oral notice.
- J. **NOTICE OF ACCIDENT OR CLAIM** - Notice of accident shall be given to the Insurance Company within one hundred twenty (120) days after such claim shall have been filed with the Comptroller of the City of New York. Notice to the Insurance Company by either party shall be deemed sufficient notice under the policy.
- K. All policies purporting to insure the City of New York must explicitly name the City, its officers, officials, and employees as the insured, and not only the Agency.

- L. The insurance policy shall contain a provision that notice of a job site accident by the Contractor to the municipality constitutes notice by the municipality to the insurer.
- M. **THE PRESENCE OF INSPECTORS OR OTHER EMPLOYEES OF THE INSURED** on the site of the work performed under the contract with the Insured shall not invalidate the policy of insurance.
- N. This policy shall not be cancelled, terminated, modified or changed by the Insurance Company unless at least thirty (30) **Days** prior written notice is sent to the Named Insured by Certified Mail and also sent by Registered Mail to both the **Commissioner** and to **Comptroller's** Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, New York 10007; and **VIOLATION OF ANY OF THE TERMS** of any policy issued by the Insurance Company to the Contractor shall not invalidate this policy.
- O. In the event that the Contractor is self-insured pursuant to this Article 7, the Contractor shall be excused from its obligation to purchase insurance pursuant to Article 7 (2) provided that the following conditions are met:
 - i) The Contractor, through its self-insurance program, must provide the Department and the City of New York with all of the protection that would have been provided by a commercial insurance company. Accordingly, the Contractor, through its self-insurance program, shall 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 or, its employees, or otherwise. This protection shall include both a duty to defend the Department and the City of New York in all actions alleging, in all or part, such injuries or damage and a duty to indemnify the Department and the City of New York for such claims up to One Million (1,000,000) Dollars per occurrence;
 - ii) The Contractor provides the Department and the City of New York with the name and address of the office or official of the self-insurance program (1) to whom notices are to be sent and (2) who is responsible for satisfying the obligations set forth in subparagraph O(i) above, including those relating to defense and indemnification of the Department and the City of New York in all such actions; and
 - iii) The Contractor is fully liable to the Department and the City of New York for satisfying the obligations set forth in subparagraph O(i) above in the event the Contractor's self-insurance program fails to satisfy any such obligations promptly upon demand.

4. PROFESSIONAL LIABILITY INSURANCE

- A. The Contractor shall maintain at their own expense professional liability insurance in the amount of one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) in the aggregate. The Contractor shall provide a Professional Liability Insurance Policy covering Breach of Professional Duty, including actual or alleged negligent acts, errors or omissions committed by the Contractor, his agents or employees, arising out of the performance of professional services rendered

pursuant to this Agreement. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury. The insurance policy shall cover all potential claims arising from the services pursuant to this Agreement. The insurance shall be obtained from a company or companies duly licensed to do business in the State of New York and shall possess a Best's credit rating of A, and not less. The Contractor shall provide the Fire Department with valid insurance certificates evidencing the coverage required by this clause prior to the commencement of services. The policy must contain no less than a five-year extended reporting period for acts or omissions that occurred but were not reported during the policy period or the policy shall be maintained for a minimum period of five (5) years following expiration or termination of this Agreement.

5. LIQUIDATED DAMAGES

If provided for in this solicitation, liquidated damages for failure to perform the work in compliance with the terms of this Agreement shall be assessed by the Department against the Contractor in accordance with said provisions. In view of the difficulty of accurately ascertaining the loss which the City will suffer because of the failure to perform and/or complete the work of this contract, liquidated damages, in the amount set forth in this solicitation, are fixed and agreed upon as such liquidated damages and not as a penalty.

The Comptroller will deduct and retain out of the monies, which may become due under this contract the amount of any such liquidated damages. In case the amount of liquidated damages, which may become due are less than the damages suffered by the City, the Contractor will be liable to pay the difference upon demand by the Comptroller.

6. MAINTENANCE AND GUARANTY

The Contractor must promptly repair, replace, restore or rebuild, as the Commissioner may determine, any finished work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one-year period subsequent to the date of final acceptance, except where other periods of maintenance and guarantee are provided for.

As security for the faithful performance by the Contractor of his obligations hereunder, the Comptroller shall retain from the final payment hereunder the sum fixed in the Specifications. If the Contractor has faithfully performed all his obligations hereunder the Commissioner shall so certify to the Comptroller within five (5) days after the expiration of one (1) year from the date of completion and acceptance of the work or with five (5) days after the expiration of the guarantee period fixed in the specifications. The sum shall be repaid to the Contractor without interest within thirty (30) days after certification by the Commissioner to the Comptroller that the Contractor has faithfully performed all his obligations hereunder.

Notice by the Commissioner to the Contractor to repair, replace, rebuild or restore such defective or damaged work shall be timely if given not later than ten (10) days subsequent to the expiration of the one year period or other periods provided for herein.

If the Contractor shall fail to repair, replace, rebuild or restore such defective or damage work promptly after having received such notice, the Commissioner shall have the right to have the work done by others in the

same contract, under Article 14 hereof and to deduct the cost thereof from the amount retained hereunder. The balance, if any, shall be returned to the Contractor without interest.

If the amount so retained be insufficient to cover the cost of such work, the Contractor shall be liable to pay such deficiency on demand by the Comptroller.

The Engineer's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective work when performed by one other than the Contractor shall be binding and conclusive as to the amount thereof upon the Contractor.

The Contractor shall obtain all manufacturers' warranties and guaranties of all equipment and materials required by this Contract in the name of the City of New York and shall deliver same to the City.

ARTICLE 8. PROVISIONS RELATING TO LABOR

1. SUPERVISION BY CONTRACTOR

- A. The Contractor shall give its personal supervision to the work or have a competent manager, foreman, or supervisor, satisfactory to the Commissioner, assigned tot he work at all times during performance of the contract, with authority to act for the Contractor.
- B. In the performance of the contract hereunder, the Contractor shall utilize competent and qualified persons. All such persons are the employees of the Contractor and not of the City and the Contractor shall be responsible for their acts, personal conduct and work.
- C. All services shall be performed in a skillful and workman-like manner. The Commissioner may require and the Contractor agrees to the removal from the work of any of the Contractor's personnel or its subcontractor's personnel deemed incompetent, careless or otherwise objectionable by the Commissioner.
- D. The Department may have the right to have representatives of the Department or of the City or the State or Federal governments present at the site of the engagement to observe the work being performed.

2. PROHIBITED ACTS

The Contractor shall not employ any labor, or utilize materials or means which employment or utilization during the course of this agreement may to in any way tend cause or result in strikes, work stoppages, delays, suspension or work or similar troubles by workmen employed by the Contractor, or by any of the trades working in or about the buildings and premises where work is being performed under this agreement, or by contractors or their subcontractors pursuant to other agreements or contacts, or on any other building or premises owned or operated by the City of New York, its agencies, departments,

boards or authorities. Any violation by the Contractor of these requirements shall be considered as proper and sufficient cause for declaring the Contractor to be in default.

3. NOTICE OF LABOR DISPUTED

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice to the Department, including all relevant information with respect thereto.

4. MINIMUM WAGE AND WORKING CONDITIONS

- A. Except for those employees whose minimum wage is required to be fixed pursuant to Section 220-d of the Labor Laws of the State of New York, all persons employed by the Contractor and any subcontractor in the manufacture or furnishing of work, labor or services, used in the performance of this contract will be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the Federal minimum wage.
- B. No part of the work, labor or service will be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or working under conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this contract. Compliance with the safety, sanitary and factory inspection laws of the state in which the work is to be performed shall be prima facie evidence of compliance with this paragraph.
- C. For any breach or violation of any of the provisions of paragraphs A and B above, the Contractor shall be liable to the City for liquidated damages, which may be withheld from any amounts due herein or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damages for any other breach of this contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this contract. In addition, the Administrator shall have the right to cancel this contract for violation of this clause and enter into other contracts for the completion of this contract, charging any additional cost to the Contractor. All sums withheld or recovered as deductions, rebates, refunds or underpayment of wages in violation of the provisions of this clause, shall be held in a special deposit account and shall be paid without interest, on order of the City Commissioner of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

5. HOURS AND WAGES

Pursuant to the provisions of the New York State Labor Law:

- A. No laborer, workman or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in

any one week except in cases of extraordinary emergency including fire, flood or danger to life or property.

No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency, and unless specific dispensation shall have been granted by the Industrial Commissioner. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workmen and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed.

- B. The wages to be paid and the supplements to be provided, for a legal day's work, to laborers, workmen or mechanics employed by the Contractor shall not be less than the prevailing wages and supplement required to be paid to such employees, as ascertained and prescribed by the Comptroller in the Specifications attached hereto.

6. ARTICLE 8, SECTION 7-11 APPLY TO CONTRACTS FOR BUILDING SERVICE WORK, AS INDICATED BELOW:

- These sections are applicable to this contract.
- These sections are not applicable to this contract.

7. PREVAILING WAGE AND SUPPLEMENTS (Sec. 231 - Labor Law)

- A. The wages which the Contractor shall pay for a legal day's work and supplements to be provided to building service employees, as defined in Section 230 of the Labor Law, employed upon the whole or part of the building service work contemplated by this contract, shall not be less than the prevailing rate of wages and any supplements required to be paid to the various classes of employees on such work, ascertained and determined by the Comptroller as set forth in a schedule which is set forth in Section B of Part III of the Proposal for Bid.
- B. No later than the first day upon which work on this contract is to commence, the Contractor shall post in a prominent and accessible place on the site of work a legible statement of the wages to be paid to the employees for the building service work contemplated.
- C. An apprentice in a craft or trade may be permitted to work at a wage lower than that established for the journeyman in such craft or trade only if all of the following conditions are met:
 - i) such apprentice has been individually registered in an apprenticeship program which is duly registered with the New York State Industrial Commissioner in conformity with Article 23 of the Labor Law;
 - ii) such apprentice's registration occurred prior to his/her employment as an apprentice on such craft or trade services work, and;
 - iii) written proof of such individual registration is submitted to the Agency prior to such apprentice's employment as an apprentice. The proof submitted shall include evidence of the appropriate ratios

and apprentice's wage rates. In no event shall the ratio of apprentice to journeyman employed on such service work be greater than the lesser of the following ratios:

- a) the ratio permitted in the apprenticeship program approved by the Industrial Commissioner, or
- b) the ratio prevailing in the locality where the service work will be performed.

8. OVERTIME (See 232 - Labor Law)

All building service employees, who work more than eight hours in any one day or more than forty hours in any work week, shall be paid wages for such overtime by the Contractor, at a rate not less than one-and-one-half times his prevailing basic cash hourly rate.

9. RECORD KEEPING Sec. 233 - Labor Law

- A. The Contractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by it as true, under penalties of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which he/she was employed, and the wages paid.
- B. Where the wages paid include sums which are not paid directly to the employee weekly and which are expended for supplements, the records shall include the hourly payment of behalf of such employees, the supplement for which such payment has been made, and the name and address of the person to whom such payment has been made. In all cases, the Contractor shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and a list of all persons for whom such payments are made.
- C. The records required herein shall be kept on the site of the work during all of the time that work hereunder is being performed. Upon a formal order of the City, the Contractor shall produce within five (5) days on the site of work, such records subscribed and affirmed by it as true under the penalties of perjury.

10. CERTIFICATION OF WAGE AMOUNTS (Sec. 237 - Labor Law)

As a prerequisite to any payment by the City, the Contractor and his subcontractors shall file a statement in writing and in a form satisfactory to the Comptroller, certifying to the amounts then due for daily or weekly wages on account of labor performed upon the work hereunder, setting forth therein the names of the persons whose wages are unpaid and the amount due to or on behalf of each respectively, which statement so to be filed shall be certified by the oath of the Contractor or subcontractor, as the case may be that he has read such statement subscribed by him and knows the contents thereof, and that the same is true of his own knowledge.

11. DISCRIMINATION IN NEW YORK STATE (Sec. 239 - Labor Law)

- A. In the hiring of employees for the performance of work under this contract or any subcontract hereunder, the Contractor or subcontractor, shall not, by any 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. The Contractor, subcontractor, or any person on his behalf shall not, 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. The City may deduct from any amount due and payable to the Contractor under this contract a penalty of five dollars (\$5.00) for each person for each day during which such person was discriminated against or intimidated in violation of this section.
- D. The City may terminate this contract, and all monies due or to become due hereunder may be forfeited, for a second or subsequent violation of this section.

ARTICLE 9. BOOKS AND RECORDS

1. MAINTENANCE

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.

2. RETENTION OF RECORDS

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for six (6) 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.

3. 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 there from without the prior approval of the Department's designated official.

4. AUDIT BY THE DEPARTMENT AND CITY

- A. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or in voices are based are subject to audit by the Fire 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.

- B. 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.
- C. All books, vouchers, records, cancelled 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.
- D. The Contractor shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

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 the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to make any other action provided for by law or pursuant to this Agreement.

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 this Agreement which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

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 Agreement 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 Agreement 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:

- I)* has published price lists, rates, or tariffs covering items being procured,
- ii)* has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or
- iii)* has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning of the above.

4. PRICING

- A. The Contractor shall whenever required during the contract, including but not limited to the time of bidding, submit cost or pricing data and formally certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a specified date. The Contractor shall be required to keep its submission of cost and pricing data current until the contract has been completed.
- B. The price of any change order, or contract modification subject to the conditions of paragraph A, shall be adjusted to exclude any significant sums by which the City finds that such price was based on cost or price data furnished by the supplier which was inaccurate, incomplete, or not current as of the date agreed upon between the parties.
- C. Time for Certification. The Contractor must certify that the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date.
- D. Refusal to Submit Data. When any Contractor refuses to submit the required data to support a price, the Contracting Officer shall not allow the price.

- E. Certificate Current Cost or Pricing Data. Form of Certificate. In those cases when cost or pricing data is required, certification shall be made using a certificate substantially similar to the one contained in Chapter 4 of the PPB rules and such certification shall be retained in the agency contract file.

ARTICLE 11. COVENANTS OF THE CONTRACTOR

1. EMPLOYEES

All experts or consultants or employees of the Contractor who are employed by the Contractor to perform work under this Agreement 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 Agreement 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 Agreement, to any person, firm or corporation.

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 of 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.

3. COMPLIANCE WITH LAW

The Contractor shall render all services under this Agreement in accordance with the applicable provision of Federal, State and local Laws, rules and regulations as are in effect at the time such services are rendered.

4. FEDERAL EMPLOYMENT PRACTICES

The Contractor and its subcontractors shall comply with the Civil Rights Acts of 1964 and any amendment thereto, and the rules and regulations thereunder.

5. 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.

- B. 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 organized under the laws of the State of New York, or;

If any person refuses to testify for a reason other than the assertion of his or her privilege against self-conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnessed 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;

- C. 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 not less that five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

If any not-governmental party to the hearing requests an adjournment, the commissioner or agency head who convene the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph E below without the City incurring any penalty or damages for delay or otherwise.

- D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
- i)* 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;
 - ii)* 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, not 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.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraph 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:

- i)* 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, of 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.
- ii)* 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.
- iii)* The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
- iv)* The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest 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 C 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.

F.

- i)* 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.
- ii)* 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.
- iii)* 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.
- iv)* 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.

G. 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 the Contractor 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 of 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 Contractor, or affecting the performance of this contract.

6. ASSIGNMENT

- A. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or of the Contractor's rights, title, interest, obligations or duties herein, or the Contractor's power to execute such Agreement, or assign, by power of attorney or otherwise, any of its rights to receive monies due or to become due under this Agreement, unless the prior written consent of the Department shall be obtained. Any such assignment, transfer, conveyance, sublease or other disposition without such consent shall be void.
- B. In the event that the Contractor assigns, transfers, conveys, sublets or otherwise disposes of this Agreement as specified in subdivision A, above, without prior written consent of the Department, the Department shall revoke and annul this Agreement and the Department shall be relieved and discharged from any and all liability and obligations growing out of such Agreement to the Contractor, its assignees, transferee or sublessee. The Contractor shall forfeit and lose all monies theretofore earned under this Agreement, except so much thereof as may be required to pay the Contractor's employees. The provisions of this section 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.
- C. This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

7. SUBCONTRACTING

- A. The Contractor agrees not to enter into any subcontracts for the performance of the 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 Contractors' written request for approval.
- B. All such subcontracts shall contain provisions specifying:
 - i)* that the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Department and the Contractor;
 - ii)* that nothing contained in such contract shall impair the rights of the Department;
 - iii)* that nothing contained therein, or under the Agreement between the Department and the Contractor, shall create any contractual relationship between the subcontractor and the Department, and
 - iv)* that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Department and the Contractor.

- C. 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.
- D. The aforesaid approval is required in all cases other than individual employer-employee contracts.
- E. The Contractor shall not in any way be relieved of any responsibility under this Agreement by any subcontractor.

8. 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 of issue any material for publication through the 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-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

9. 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 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon 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 affiliate company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, 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 343-10.0 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

10. 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, it 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 Agreement.
- C. If any copyrightable material is developed under, or in the course of performing this Agreement, any Federal Agency providing federal financial participation for the Agreement shall have a royalty-free, non exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, the work for governmental purposes.
- D. In no event shall subsections A, B, and C of this section be deemed to apply to any report, document or other data, or any invention of the Contractor which existed prior to, or was developed or discovered independently from, its activities related to or funded by this Agreement.

11. ANTI-TRUST

The Contractor hereby assigns, sells, and transfers to the City all rights, title and interest in and 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.

12. POLITICAL ACTIVITY

- A. There shall be no partisan political activity to 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, not shall any of the funds provided under this Agreement be used for such purposes.
- B. No funds provided under this Agreement shall be used, for publicity or propaganda purposes, for the preparation distribution, or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation or appropriations pending before the Congress of the United States, except in presentation to the Congress itself.
- C. No funds provided under this Agreement shall be used to pay the salary or expenses of any person to engage in any activity designed to influence legislation or appropriations pending before the Congress of the United States.

13. CETA AND PUBLIC WORKS PROGRAM

- A. The Contractor shall, when hiring into unsubsidized jobs in its workforce, give consideration to those persons presently employed in CETA public service positions in the City of New York, whose qualifications and skills are commensurate with those required for the positions to be filled.

14. CLEAN AIR PROVISIONS

- A. If the amount of this Agreement is in excess of \$100,000.00 the Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C 1857B, et. seq.) and the Federal Water Pollution Act (33 U.S.C. 1251, et. seq.)
- B. Should a harmful dust hazard be created in performing the work of this Contract, for the elimination of which appliances or methods have been approved by the Board of Standards and Appeals of the State of New York, such appliances and methods shall be installed, maintained, and effectively operated during the continuance of such harmful dust hazard. Failure to comply with this provision after notice shall make this Contract void.
- C. In accordance with the provisions of Section 1403.3.2.25, noise abatement contract compliance, of Part III of Chapter 57 of the Administrative Code of the City of New York.
 - i) Devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the New York City Noise Control Code shall be operated, conducted, constructed, or manufactured without causing a violation of the Code.

ARTICLE 12. EXTENTION OF TIME

Upon written application by the Contractor, the Agency Chief Contracting Officer may grant an extension of time for performance of the contract. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred, and the total number of delay in days attributable to such cause.

The ruling of the Agency Chief Contracting Officer shall be final and binding as to the allowance of an extension and the number of days allowed.

ARTICLE 13. NO DAMAGE FOR DELAY

The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.

ARTICLE 14. RESOLUTION OF DISPUTES

1. All disputes between the City and the supplier of the kind delineated in this section 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"). The procedure for resolving all disputes of the kind delineated herein 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 supplier's work to the contract, and the acceptability and quality of the supplier's work; such disputes arise when the Engineer makes a determination with which the supplier 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 supplier shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer ("ACCO") or Engineer. Failure of the supplier to continue the work as directed shall constitute a waiver by the supplier 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 supplier shall present its dispute in writing ("Notice of Dispute¹") 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 supplier relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the supplier 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, 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 supplier to produce any requested material whose relevancy the supplier has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the supplier 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 supplier and the ACCO and, in the case of construction or construction-related services, the Engineer, 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 supplier with a contract related to the work of this contract and that supplier shall be bound by the decision of the Agency Head. Any supplier thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the supplier 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 supplier and ACCO and, in the case of construction or construction-related services, the Engineer, 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 supplier take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the supplier 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 supplier to the CDRB, the supplier 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 supplier 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 supplier 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 supplier to the agency, including the Notice of Dispute. The supplier 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 supplier. Willful failure of the supplier to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the supplier 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 supplier and

the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The supplier 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 supplier, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

(a) Form and Content of Petition by Supplier. The supplier 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 supplier 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 supplier 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 supplier to, the Comptroller's Office. The supplier 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 supplier 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.

Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the supplier 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 supplier. 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 supplier 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 supplier 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 supplier 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 supplier, 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. A decision in favor of the supplier 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 15. EQUAL EMPLOYMENT

1. EXECUTIVE ORDER NO. 50

The Contractor shall comply with the provisions relating to Equal Employment Opportunity as set forth in the Addendum, which is attached hereto and incorporated herein.

2. WHERE REQUIRED BY NEW YORK STATE LABOR LAW SECTION 220-E THE CONTACTOR AGREES:

- A. That in the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor shall be reason of race, creed, color, sex, national origin or sexual orientation 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 its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex, national origin or sexual orientation;
- C. That there may be deducted from the amounts payable to the Contractor by the City under this Agreement 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 Agreement and;
- D. That this Agreement may be cancelled 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 Agreement.
- 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.

3. AS REQUIRED BY NEW YORK CITY ADMINISTRATIVE CODE SECTION 343-8.0:

- 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, or 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 Agreement.
- 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 (30) days, or both.

4. NON-DISCRIMINATION AGAINST THE HANDICAPPED

The Contractor agrees that it will comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and all regulations, guidelines and interpretations issued pursuant thereto.

ARTICLE 16. TERMINATION

- A. At any time during the period of this Agreement the Department upon ten (10) days written notice to the Contractor may cancel the Agreement and terminate the service. In such event the Contractor shall be paid whatever sum has become due to him for services performed prior to the effective date of the cancellation without further liability to the City.
- B. The Contractor shall be entitled to apply to the Department by reason of any failure in 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; flood; 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.

- C. All payments pursuant to this Section 16.1 shall be accepted by the Contractor in full satisfaction of all claims against the City arising out of termination.
- 2. The Contractor may be declared in default by this administration and the Department may terminate the Agreement in whole or in part by written notice to the Contractor:
 - A. The Contractor becomes insolvent, or
 - B. The Contractor makes an assignment for the benefit of creditors pursuant to the Statutes of the State of New York, or
 - C. A voluntary or involuntary petition in bankruptcy be filed by or against the Contractor, or
 - D. A receiver or receivers are appointed to take charge of the Contractor's property or affairs, or
 - E. The Contractor sublets, assigns, transfers, conveys or otherwise disposes of this Agreement other than as herein specified, or
 - F. The Contractor fails or refuses to proceed with the work when and as directed by the Administrator, or
 - G. The Contractor is or has been unnecessarily or unreasonably or willfully delaying:

- i) the performance, and completion of the work, or
 - ii) the award of necessary subcontracts, or
 - iii) the placement of necessary material and equipment order, or
- H. The Contractor, without just cause, reduces his working force to a number which, if maintained, would jeopardize the timely performance of the contract, and fails or refuses to increase such working force when ordered to do so by the Administrator, or
- I. The work cannot be completed or is not completed within the time herein provided thereof or within the time to which such completion may have been extended; unless, however, the delay is caused by circumstances under the Administrator's control, or
- J. The Contractor abandons work, or
- K. The Contractor is or has been willfully or in bad faith violating any of the provisions of this contract.
3. Before the Administrator shall exercise his right to declare the Contractor in default by reason of the conditions set forth in Section 16-.2 A, F, G, H, I, and K, and he shall give the Contractor an opportunity to be heard, on two (2) days written notice, at which hearing the Contractor may have a stenographer present; provided, however, that a copy of such stenographic notes, if any, shall be furnished to the Administrator.
4. In the event the Administrator terminates this Agreement in whole or in part as provided in Section 16.2 above, the City may procure, upon such terms and in such manner deemed appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or services: provided that, the Contractor shall continue the performance of this Agreement to the extent not terminated hereby.
5. The right to declare in default for any of the grounds specified or referred to herein, shall be exercised by sending the Contractor a notice, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared.
6. Upon receipt of such notice, the Contractor shall immediately discontinue all further operations under this contract and shall immediately quit the site leaving untouched all plant, materials, equipment, tools, and supplies then on the site.
7. The Commissioner, after declaring the Contractor in default, may then have the work completed by means and in such manner, by contract with or without public letting, or otherwise, as he may deem advisable, utilizing for such public letting, or otherwise, as he may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies, remaining on the site, and also such subcontractors, as he may deem advisable.
8. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of Contractor's default, 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.

9. The provisions of the Agreement regarding confidentiality of information shall remain in full force and effect following any termination.
10. The rights and remedies of the City provided in this article shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Agreement.

ARTICLE 17. MISCELLANEOUS

1. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

This Agreement shall be deemed to be executed in the City 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 Agreement 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 effectuate 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 Agreement, 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.

2. GENERAL RELEASE

The acceptance by the Contractor or its assignees of the final payment under this Agreement, 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 Agreement.

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 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 at law or proceeding in equity shall lie or be maintained against the Department or the City upon any claim based upon this Agreement or arising out of this Agreement unless such action shall be commenced within six (6) months after the date of final payment hereunder, or within six (6) months of termination or conclusion of this Agreement, or within six (6) months of accrual of the cause of action, whichever is earliest.
- 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 the 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.

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 Agreement.

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. NOTICE

The Contractor and the Department hereby designate the business addresses specified in the Bid 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.

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.

8. SEVERABILITY

If this Agreement contains any unlawful provision not any 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.

9. PARAGRAPH HEADING

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 Agreement and in no way affect this Agreement.

10. INSPECTION AT SITE

The Department shall have the right to have representatives of the Department, of the City, or of the State or Federal governments present at the site of the engagement to observe the work being performed.

ARTICLE 18. APPROVALS

1. THE CITY OF NEW YORK

This Agreement shall not become effective or binding unless:

- A. The Comptroller shall have endorsed his certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable hereto sufficient to pay the estimated expense of executing this, and
- B. 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
- C. 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.

2. OTHER APPROVALS OR AUTHORIZATION

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

ARTICLE 19. ADDITIONAL COVENANTS

1. CONVERSION OF DEFAULT TO TERMINATION FOR CONVENIENCE

If, after a declaration of default under Article 16.2, it is determined that for any reason the Contractor was not in default under the provision of such Article, or that such default was excusable, the rights and obligation of the parties shall be the same as if a notice of termination had been issued under Article 16.00 (A) of this Agreement.

2. CONTRACT CHANGES

Changes may be made to this contract only as duly authorized by the Agency Chief Contracting Officer or the Agency Chief Contracting Officer's designee. Contractors deviating from the requirements of an original purchase order or contract without a duly approved change order, do so at their own risk. All such changes, modifications, and amendments will become a part of the original contract.

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.

Changes may include any one or more of the following:

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

- Extensions of a contract term for good and sufficient cause for a cumulative period not to exceed one year from the date of expiration of the current contract. Requirements contracts shall be subject to this limitation;
- Changes in delivery location;
- Changes in shipment method; and
- Any other change not inconsistent with §4-02 of the P.P.B. Rules (ed. 3/04).

The Contractor may be entitled to a price adjustment for extra work performed or to be performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the Contractor may be entitled to an extension to time for performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

- A. by unit prices specified in the contract;
- B. by time and material record, and /or
- C. in any other manner approved by the City Chief procurement Officer.

Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification by post audit. If the post-audit reveals 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.

Except in the case of requirement contracts, any contract increases which cumulatively exceed the greater of 10% or \$100,000.00 must be approved in writing by the City Chief Procurement Officer. Any contract amendment, which amends a unit price, cancels required units, or adds a new type of unit item to the contract must be approved in writing by the Agency Chief Contracting Officer.

ARTICLE 20. ENTIRE AGREEMENT

This written Agreement including any attachment or references which have been incorporated herein, contains all the 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 21. PPB RULES

This contract is subject to the Rules of the Procurement Policy Board of the City of New York dated July 2005. In the event of a conflict between said Rules and a provision of this contract, the Rules shall take precedence.

The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007, telephone number (212) 669-3000.

ADDENDUM I

The addendum is inserted in the Agreement for the purpose of complying with and obtaining the exemption provided by Section 1115 (6) (15) of the New York State Tax Law, as added by Laws of 1969, Chapter 473 from New York State Sales Tax and Compensating Use Tax, for the purchase of materials required by this contract, except materials consumed by the Contractor in the performance thereof. The Contractor, when bidding, should not include an amount to cover such New York State or New York City taxes.

- a) The City of New York (City) is exempt from payment of Federal, State, Local taxes and Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to the City pursuant to the provisions of this contract. These taxes are not to be included in bids. However, this exemption does not apply to tools, machinery, subcontractor, or to supplies and materials which, even though they are consumed, are not incorporated into the completed work (the Contractor and his subcontractors shall be responsible for and pay any and all applicable taxes, including Sales and Compensation Use taxes, on such leased tools, machinery, equipment or other property and upon all such unincorporated supplies and materials and consumable supplies).
- b) The Contractor agrees to sell and the City agrees to purchase all supplies and materials, other than consumable supplies, required, necessary or proper for or incidental to the construction of the Project covered by this Agreement. The sum paid under this Agreement for such supplies and materials shall be in full payment and consideration for the sale of such supplies and materials under this Agreement.

The Contractor agrees to construct the Project and to perform all work, labor and services required, necessary or proper for or incidental thereto for the sum shown in the bid for the performance of such work, labor and services, and the sum so paid pursuant to this Agreement for such work, labor, etc. shall be in full consideration for the performance by the Contractor of all his duties and obligations under this Agreement in connection with said work and labor.

- c) The purchase by the Contractor of the supplies and materials sold hereunder shall be a purchase or procurement for resale and therefore not subject to the New York State or New York City Sales or Compensating Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials by the Contractor to the City is exempt from the aforesaid sales or compensating use taxes.

With respect to such supplies and materials the Contractor, at the request of the City, shall furnish to the City such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered assuring to the City title to such supplies and materials, free of liens or encumbrances, and the Contractor shall mark or otherwise identify all such materials as the property of the City.

- d) Title to all materials to be sold by the Contractor to the City, pursuant to the provisions of the Contract, shall immediately vest in and become the sole property of the City upon delivery of such supplies and materials to the site and prior to its becoming a part of the permanent structure. Notwithstanding such transfer of title, the Contractor shall have the full and continuing responsibility to install such materials and supplies in accordance with the provisions of the Agreement, protect them, maintain them in a proper condition and forthwith repair, replace, and make good any damage thereto, theft or disappearance thereof, theft or disappearance thereof, and furnish additional materials in place of any that may be lost,

stolen or rendered unusable, without cost to the City, until such time as the work covered by the Contract is fully accepted by the City. Such transfer of title shall in no way affect any of the Contractor's obligations hereunder. In the event that, after title has passed to the City, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.

- e) The purchase by subcontractors of supplies and materials to be sold hereunder shall also be a purchase or procurement for resale to the Contractor (either directly or through other subcontractors) and therefore not subject to the aforesaid subcontract agreements provide for the resale of such supplies incorporation of such supplies and materials into the permanent construction and that such subcontract agreements are in a form similar to this Contract with respect to the separation of the sale of materials from the work and labor, services, consumable supplies and any other matters to be provided and provided further that the subcontract agreements provide separate prices for (1) materials and (2) all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other work and labor and other things to be provided.
- f) The Contractor and his subcontractors and material men shall obtain any and all necessary Contractor Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a Contractor Exempt Purchase Certificate or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the work covered by this Contract.
- g) In the event any of the provisions of the agreement to which this is an addendum shall be deemed to be in conflict with this addendum or shall be deemed to be in conflict with this addendum or shall create any ambiguity, then the addendum shall control.

SUPPLY AND SERVICE BID LANGUAGE

This contract will be subject to the Mayor's Executive Order No. 50 (1980) (E.O. 50) and the rules and regulations promulgated thereunder. E.O. 50 requires municipal contractors to be equal opportunity employers who do not discriminate against employees and applicants for employment in any employment decision, based on race, color, creed, national origin, sex, age disability, marital status or sexual orientation.

Before the contracting agency may award the contract, the proposed Contractor (low bidder or identified vendor) must fulfill E.O. 50's requirements in their entirety. The proposed Contractor on a contract in excess of \$50,000 must submit to the contracting agency a fully completed Supply and Service Employment Report (ER), if the Contractor employs at least 50 employees. (Such covered Contractors who employ less than 50 employees must complete and submit an affidavit to that effect. The affidavit is part of the ER). The contracting agency will send the ER to the Bureau of Labor Services (Bureau) for pre-award review. The Contractor must file an ER for each facility involved in performing the contract. The ER requires the Contractor to submit four kinds of information:

- 1) information about the nature and results of previous government audits or complaints concerning the Contractor's compliance with equal employment opportunity (EEO) requirements, along with copies of existing Affirmative Action Plan (AAP's);

- 2) copies of fringe benefit plan, personnel manuals, employment applications and collective bargaining agreements where applicable;
- 3) information concerning the Contractor's employment policies and practices in such areas as recruitment, selection and promotion of employees, validation of selection devices, content and dissemination of EEO policies, preemployment physical exams, architectural barriers and facilities for disable employees, compensation and fringe benefits, and;
- 4) a detailed analysis of the racial and sexual composition of the Contractor's workforce by job group. The Contractor must fill out four data tables, including a job match/job group form. The job match/group form gathers the Contractor's job titles into job groups. The other forms require among other things, incumbent, new hire (including salary), promotion and termination (including age) information by race and sex.

Effective September 1, 1984, instead of completing the data tables (including job/match group form) Contractors that maintain personnel information on a computerized data base will be expected to submit the information on computer tapes in the format set forth by the Bureau. Copies of the format, the ER, E.O. 50 and the rules and regulations are available upon request from the contracting agency.

The Bureau will review the completed ER and will authorize the contracting agency to award the contract if the Bureau finds that the Contractor complies with E.O. 50 and the implementing regulations. However, if the Bureau's review identifies under-utilization of minorities or women or employment practices that do not comply with E.O. 50, the Bureau may first confer with the Contractor to develop an Employment Program to correct these problems. Failure to meet the requirements of E.O. 50 may result in the imposition of sanctions including disapproval of the Contractor, or suspension or termination of the contract.

Every subcontract or purchase order (performing part of the prime contract) in excess of \$50, 000 is also subject to the mandates of E.O. 50 and its rules and regulations. The prime Contractor must notify each of its subcontractors or vendors of the requirements and the obligation to submit an ER and must ensure that each subcontractor or vendor submits the ER to the contracting agency.

The contract that the vendor and agency will enter into is mandated to contain E.O. 50 language. The required contractual language is part of Appendix A, General Provisions and is included herein for your information:

This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (E.O. 50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied within their entirety. By signing this contract, the Contractor agrees that it:

- (1) will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, with respect to all employment decisions including, by 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;

- (2) will not discriminate in the selection of subcontractors on the basis of the owner's, partner's or shareholders' race, color, creed, national origin, sex, age, disability, marital status or sexual orientation;
- (3) 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 is an equal employment opportunity employer;
- (4) will send to each labor organization or representative of 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,
- (5) will furnish before the contract is awarded all information and reports including an Employment Report, which are required, by E.O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Bureau of Labor Services ("Bureau"). Copies of all required reports are available upon request from the contracting agency, and;
- (6) will permit the Bureau to have access to all relevant books, records and accounts by the Bureau for the purpose of investigation to ascertain compliance with such rules, regulations and orders.

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 breach of contract and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Bureau, the Director may direct the imposition by the contracting agency head of any of all of the following sanctions:

- i.* disapproval of the Contractor;
- ii.* suspension or termination of the contract;
- iii.* declaring the Contractor in default, or;
- iv.* in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Bureau may recommend to the contracting agency head that a Board of Responsibility constituted pursuant to the PPB rules and regulations be convened for purposes of declaring a Contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

The Contractor agrees to include the provisions of the foregoing paragraph in every subcontract or purchase order in excess of \$50, 000 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 the Bureau of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

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.

**MACBRIDE PRINCIPLES PROVISIONS
FOR THE NEW YORK CITY CONTRACTORS**

ARTICLE I. MACBRIDE PRINCIPLES

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 workplace opportunity.

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 in Northern Ireland operations conducted by the contractor holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of non discrimination in employment.

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.

In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these condition, 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.

PART A

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.

PART B

For purposes of this section, the following terms shall have the following meanings:

1. “MacBride Principles” shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

(1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

(2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

(3) ban provocative religious or political emblems from the workplace;

(4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups.

(5) establish layoff, recall and termination procedures, which do not in practice favor a particular religious group;

(6) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

(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;

(8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

(9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE II. ENFORCEMENT OF ARTICLE I

The contractor agrees that the covenants and representation in Article I 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 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 requirements 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.

APPENDIX B – AMERICANS WITH DISABILITIES ACT

AMERICANS WITH DISABILITIES ACT

The following provisions to this agreement

are applicable/ not applicable.

This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs or activities pursuant to this Agreement. To ensure Contractor’s compliance with the ADA during the term of this Agreement the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail how it intends to make the services, programs or activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s) listed. In the event the program site is not readily accessible and usable by individuals with disabilities, Contractor shall also include in the Compliance Plan a description of reasonable alternative means and methods that result in making the services, programs or activities set forth herein readily accessible to and usable by individuals with disabilities at such site(s) listed. In the event the program site is not readily accessible and usable by individuals with disabilities, Contract shall also include in the Compliance Plan a description of reasonable alternative means and methods that result in making the services, programs or activities set forth herein readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, audio, or mobility disabilities.

