



FIRE DEPARTMENT OF THE CITY OF NEW YORK



BIDDER SUMMARY SUBMISSION REQUIREMENTS FOR SERVICE CONTRACTS

TO BIDDER:

A. It is the vendors responsibility for ensuring their bid submission is properly completed and submitted. The successful vendor is responsible for all applicable terms and conditions contained herein. At a minimum the vendor should perform the following:

1. Note time, date and location for the Receipt of Bids and if applicable, the date of the Pre-bid Conference on pages 7 and 8. **It is the vendor's responsibility to submit the bids at the appropriate time and location.**
2. Review the entire scope of work contained in the specifications, page 10.
3. Review the Schedule of Contract Requirements, Schedule A, page 11.
4. Review the General Terms and Conditions.
5. Review liquidated damages, insurance and period of performance requirements located on page 11, Schedule A and further described on page 28.
6. Review and acknowledge all bid amendments if applicable.
7. Submit Bonds, if applicable, refer to page 11, Article 7, and further described on pages 28.

B. THIS SECTION MUST BE COMPLETED IN ITS ENTIRETY:

Complete Part III – Bid Submission Documents, page 69- 78. In order for this Bid to be considered, be sure to sign, notarize, and affix the corporate seal on all applicable pages.

1. PAGE 69 – 78 Bid Price Submission Section, must be signed, and if incorporated, sealed.

C. All qualification requirements as stated herein shall be in effect and current as of the date of the bid submission.

D. Upon notification, the Bidder shall submit the following documentation within seven (7) days from either written or oral notification.

1. Department of Labor Services **Supply and Service Report**
2. Complete, execute, and notarize **Vendex Business and Principal Questionnaire** Refer to page 79.
3. Provide a minimum of **four (4) references**. References must include name, telephone number, and a contact person.
4. Provide a **Certificate of Insurance**.
5. All other applicable documents as provided herein.

E. Failure to provide all required documentation, information or disclosure statements may result in a determination of non-responsiveness in accordance with the New York City Procurement Policy Boars Rules, Section 2-07.



THE CITY OF NEW YORK

FIRE DEPARTMENT

**BUREAU OF FISCAL SERVICES
CONTRACT DEVELOPMENT UNIT**

**COMPETITIVE SEALED BID
AGREEMENT AND SPECIFICATIONS**

PROJECT DESCRIPTION

TEMPORARY PHYSICIANS

PIN NO. 0570060002901
CONTRACT NO. _____
NYC LAW DEPT. NO. _____

NOTICE TO BIDDERS

Effective July 1, 2005, the Procurement Policy Board (PPB) has made extensive changes to the numbering system of its Rules, resulting in a substantial renumbering of the Rules. The section numbers of PPB rules that are cited or referred to in the Contract contained herein have not been changed to reflect the new numbers, and thus in many instances the section numbers will be inaccurate. For purposes of determining the correct section number of a PPB Rule being cited in a particular Contract provision, bidders are referred to the PPB Rule that addresses the subject matter indicated in that Contract provision.

TABLE OF CONTENTS

PART I: BID INFORMATION, SPECIFICATION, SUBMISSION REQUIREMENTS6

SECTION A - INFORMATION FOR BIDDERS7

SECTION B – SPECIFICATIONS AND SCOPE OF WORK.....10

SCHEDULE OF CONTRACT REQUIREMENTS11

SECTION D - BID INFORMATION12

1. BID SUBMISSION CHECK LIST12

2. DEFINITIONS.....12

3. INVITATION FOR BIDS DOCUMENTS12

4. EXAMINATION OF PROPOSED CONTRACT.....13

5. FORM OF BID13

6. BIDDER'S OATH.....13

7. SITE VISIT.....14

8. BIDS SHALL BE TYPEWRITTEN OR WRITTEN LEGIBLY IN INK.....14

9. IRREVOCABILITY OF BID14

10. ACKNOWLEDGMENT OF AMENDMENTS14

11. BID SAMPLES AND DESCRIPTIVE LITERATURE.....14

12. PROPRIETARY INFORMATION/TRADE SECRETS14

13. BID EVALUATION AND AWARD15

14. LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS15

15. WITHDRAWAL OF BIDS15

16. MISTAKE IN BIDS15

17. LOW TIE BIDS.....17

18. REJECTION OF BIDS17

19. RIGHT TO APPEAL DETERMINATIONS OF NON-RESPONSIVENESS OR NON-RESPONSIBILITY AND RIGHT TO PROTEST SOLICITATIONS AND AWARD.....18

20. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY18

20A.	MINORITY- OR WOMAN-OWNED BUSINESS AND/OR LOCALLY-BASED ENTERPRISE.....	18
21.	VENDEX QUESTIONNAIRE.....	18
22.	AUDIT BY COMPTROLLER.....	18
23.	BID SECURITY.....	19
24.	PERFORMANCE BOND.....	19
25.	PAYMENT BOND	19
26.	DEPOSITS.....	19
27.	FAILURE TO EXECUTE CONTRACT.....	20
28.	POWER OF ATTORNEY	20
29.	FINANCIAL QUALIFICATIONS	20
30.	BUREAU OF OFFICE LABOR SERVICES INFORMATION.....	21
31.	PROCUREMENT POLICY BOARD RULES	21
	PART II AGREEMENT.....	22
	ARTICLE 1. THE CONTRACT	22
	ARTICLE 2. DEFINITIONS	22
	ARTICLE 3. SCOPE OF SERVICES	24
	ARTICLE 4. PERIOD OF PERFORMANCE.....	24
	ARTICLE 5. PAYMENT	24
	ARTICLE 6. LIABILITY OF CONTRACTOR.....	25
	ARTICLE 7. BONDS, INSURANCE AND LIQUIDATED DAMAGES	27
	ARTICLE 8. PROVISIONS RELATING TO LABOR.....	32
	ARTICLE 9. BOOKS AND RECORDS	36
	ARTICLE 10. REPRESENTATIONS AND WARRANTIES	37
	ARTICLE 11. COVENANTS OF THE CONTRACTOR.....	39
	ARTICLE 12. EXTENTION OF TIME.....	45
	ARTICLE 13. NO DAMAGE FOR DELAY	46
	ARTICLE 14. RESOLUTION OF DISPUTES	46
	ARTICLE 15. EQUAL EMPLOYMENT	51

ARTICLE 16. TERMINATION.....	53
ARTICLE 17. MISCELLANEOUS	55
ARTICLE 18. APPROVALS	58
ARTICLE 19. ADDITIONAL COVENANTS	58
ARTICLE 20. ENTIRE AGREEMENT	59
ARTICLE 21. PPB RULES	59
ADDENDUM I	60
PART III - BID SUBMISSION DOCUMENTS	69
PART III - BID SUBMISSION DOCUMENTS	69
BID PRICE SUBMISSION.....	69
AFFIRMATION OF TAXES PAID	73
CONTRACTOR QUESTIONNAIRE.....	74
VENDEX GUIDE FOR BIDDERS VENDEX QUESTIONNAIRES	76
AMERICANS WITH DISABILITIES ACT.....	77
MACBRIDE PRINCIPLES PROVISIONS FOR THE NEW YORK CITY CONTRACTORS	78
ACKNOWLEDGMENT OF ADDENDA	82

**PART I: BID INFORMATION, SPECIFICATION, SUBMISSION
REQUIREMENTS**

SECTION A - INFORMATION FOR BIDDERS

1.0 Description of Procurement

TEMPORARY PHYSICIANS AND REGISTERED NURSES

2.0 Bid Submission Requirements

- PAGE 69 - Bid Price Submission Section, must be signed, and if incorporated, sealed.

2.1 Time and Place for Receipt of Bids

- a. Sealed bids shall be received by the Fire Department of the City of New York on or before the day, at the time and at the location set forth below:

Time: 4:00 P.M.

Date: April 3, 2007

Place: 9 MetroTech Center, Brooklyn, N.Y. 11201
5th Floor, 5S-01-K, Contract Development Unit

Attention: Barry Greenspan

- b. The completed bid must be submitted in a sealed envelope to **Contract Development Unit, 5th Floor, Section 5S-01-K** on or before the date and time indicated in Section A - INFORMATION FOR BIDDERS 2.1.a. The envelope must be marked with the name of the person, firm or corporation presenting it, the bid opening date, bid number and bid title. The bid and all other documents requiring signature must be signed and notarized, if required. Failure to comply with these instructions may result in rejection of our bid.
- c. All bids received in **Section 5S-01-K** are time stamped and issued a receipt by the Contract Development Unit. Only Contract Development Unit receipts and time stamps are authorized. U.S. mail or messenger delivery receipts will not be accepted as proof of delivery. A copy of the Contract Development Unit receipt is attached to the bid package and a duplicate provided to a messenger, if hand delivered. The bidder is responsible for timely delivery of the bid package to **Section 5S-01-K**. The Fire Department is not responsible for any delays in delivery of the bid. This includes, but is not limited to, outside mail and delivery services, messenger services, internal security delays, transportation delays, **or Fire Department Internal Mail Distribution Services.**

Bidders are advised that on occasion security delays at the building entrance can exceed one (1) hour. Bidders delivering the bids must be in possession of valid identification that will be retained at the security desk until the bidder exits the building. This identification can be a driver's license, passport, employee id, credit card, bank card, or immigration card (green card).

Bidders utilizing overnight delivery services should note that the delivery of the bid is made directly to the Fire Department mailroom. The bid will be delivered to **Contract Development Unit, 5th Floor, Section 5S-01-K** by the Fire Department internal mail distribution personnel. Regular mail service is held at the post office for daily pick up by Fire Department Employees. Bidders should be further aware that all mail including overnight packages are sorted in the morning and delivered in the afternoon. Therefore, if the bid is due in the morning and overnight services are utilized, bidders should allow at least two (2) business days for delivery.

Any bid received at **Contract Development Unit, 5th Floor, Section 5S-01-K** after the time and date set for receipt of bids is **late and shall not be considered**. Late bids and modifications shall be promptly returned to the bidder unopened. (Procurement Policy Board Rules 3-02(k) (1) and (3)).

d. Pre-Bid Conference

- A pre-bid conference will not be held for this solicitation.
- A pre-bid conference shall be held on the following date, at the time and at the location set forth below:

Time: _____

Date: _____

Place: _____ (including room number, if applicable)

Mandatory or Optional: _____ If Bidder attendance at this pre-bid conference is mandatory, failure to attend shall constitute grounds for the rejection of your bid. Information provided at the pre-bid conference shall not be change the terms or conditions of the Invitation For Bids unless a change is made by written amendment.

e. Agency Contact

Any questions or correspondence relating to this bids solicitation shall be addressed to:

Name: Malissa Smith
Address: 9 MetroTech, Brooklyn, N.Y. 11201
Telephone: (718) 999-1234
Fax: (718) 999-0177

All questions must be received ten (10) business days prior to the bid due date. Questions received after this period will not be accepted.

Section VIII Charter Section 312(a) Certification:

The Fire Department has determined that the contract to be awarded through this solicitation (PIN # 057060002901

TEMPORARY PHYSICIANS

will not directly result in the displacement of any New York City employee.

Signature of Agency Chief Contracting Officer

Date

SECTION B – SPECIFICATIONS AND SCOPE OF WORK

SPECIFICATION FOR THE PROVISION OF CONSULTANT PHYSICIAN SERVICES

I. INVITATION

The Fire Department of the City of New York seeks the services of a qualified temporary physicians and contractor hospital or professional organization consisting of doctors to act as a Contractor to provide consultant physicians to supplement the medical staff at the Department's Bureau of Health Services, located at 9 MetroTech Center, 2nd Floor, Brooklyn, New York 11201-3857.

II. DEFINITIONS

- A. "Agreement" means this Agreement as amended, modified, or supplemented from time to time in accordance with the terms of this Agreement.
- B. "BHS" means the Bureau of Health Services of the New York City Fire Department, located at 9 MetroTech Center, 2nd Floor, Brooklyn, New York 11201-3875, that is responsible for monitoring the fitness for duty of FDNY uniformed and Emergency Medical Service personnel.
- C. "City Holidays" means New Years' Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.
- D. "Contractor" means the hospital or professional corporation consisting of doctors providing services pursuant to this Agreement.
- E. "Contractor Employee" means any and all employees' of the Contractor providing services pursuant to this Agreement.
- F. "FDNY" or "Department" means the Fire Department of the City of New York with its headquarters located a 9 MetroTech Center, Brooklyn, New York, 11201-2857.
- G. "FDNY Authorized Representative" means the Chief Medical Officer of the Department or his or her designated representative.
- H. "FDNY Facility" means a FDNY division or battalion office, firehouse, ambulance station or other location owned, leased or operated by FDNY.
- I. "Notice to Proceed" means the written notification to the Contractor to commence provision of services pursuant to the Agreement.
- J. "Services" means any or all Services performed by the Contractor pursuant to this Agreement

III. SCOPE OF SERVICES

- A. The Contractor shall provide, on a temporary basis, consultant physicians to meet BHS's requirements for such professional medical services.
- B. The Contractor shall recruit and provide temporary medical personnel as requested by the FDNY Authorized Representative. The Contractor shall provide sufficient personnel to accommodate multiple work locations and shifts. The FDNY may, at its discretion, refer personnel to the Contractor for consideration for hiring as a Contractor Employee. Nothing contained herein shall be construed to require the Contractor to hire such personnel.
- C. All Contractor Employees shall meet the qualifications set forth in Section V of the Agreement, and shall possess the training and skill required to perform the duties and undertake the responsibilities described therein at the time of the bid submission.
- D. The regular work schedule for Contractor Employees shall be an eight (8) hour day, from 8:00 am to 5:00 pm, Monday through Friday, exclusive of City Holidays, with a one (1) hour break for lunch. The FDNY reserves the right to change the work schedule as required to meet the needs of the FDNY. Such changes may include requiring Contractor Employees to work evenings, City Holidays, weekends, or overtime. Overtime is defined as any hours accumulated after completing 40 hours in any given work week. Contractor Employees shall not work overtime hours, unless such overtime is authorized in advance by the FDNY Authorized Representative.
- E. Contractor Employees may be assigned to any FDNY. The FDNY Authorized Representative must approve all assignments and reassignments.
- F. The FDNY shall supply the temporary medical personnel with the materials and equipment necessary and appropriate to perform the work required by this Agreement. The Contractor shall supply white lab coats and nametags to all Contractor Employees, at no additional charge to FDNY.
- G. The FDNY Authorized Representative may request that the Contractor provide a Contractor Employee by telephone or other means. As soon as practical following such request for each Contractor Employee, Contractor shall submit Contractor Employee's professional resume to the FDNY Authorized representative for approval. FDNY reserves the right to reject any Contractor Employee who the FDNY considers unqualified to perform the required Services. Upon approval of Contractor Employee's professional qualifications and within twenty-four (24) hours of the initial request for Contractor Employee, Contractor shall provide the approved Contractor Employee to FDNY.
- H. FDNY shall provide the Contractor with the name, address including room number, and the telephone number of the FDNY Authorized Representative the Contractor Employee shall initially report, and the name of the FDNY Authorized Representative responsible

for the assignments. The Contractor shall communicate such information to the Contractor Employees.

- I. Each Contractor Employee shall be required to report to a designated FDNY Authorized Representative to obtain their work assignments. All Contractor Employees shall be required to report all absences, instances of lateness, or any other changes in status to the FDNY Authorized Representative responsible for their assignments. Contractor Employees must also maintain and submit time records to the designated FDNY Authorized Representative at the end of each work week in which they perform services.
- J. Contractor Employees shall at all times remain employees of the Contractor and shall not be considered employees of FDNY or the City of New York. The Contractor shall be solely responsible for their personal conduct, compensation and all other terms and conditions of employment, including Workers' Compensation and disability coverage.
- K. The Contractor Employees shall not make personal use of any FDNY office equipment or telephones without the express permission of FDNY.
- L. The FDNY reserves the right to obtain any required temporary medical personnel, from other sources.
- M. Quality Control Program
 - 1. The Contractor shall be responsible for the monitoring and review of all work performed to ensure compliance with the Agreement requirements. The Contractor shall establish a complete Quality Control program to ensure the requirements of the Agreement are provided as specified. The program shall include, but not be limited to:
 - a. An audit system covering all services furnished by the Contractor.
 - b. A checklist for use in reviewing performance during regularly scheduled or unscheduled quality assurance reviews.
 - c. The results of the quality assurance reviews including documentation of all corrective action taken shall be documented in on-going inspection reports along with the names of the individuals performing the inspections. These reports shall be made available to the FDNY Authorized Representative within twenty-four (24) hours of oral notification.
 - 2. The Contractor shall be responsible for all work performed to ensure compliance with the Agreement requirements. The Contractor shall be responsible for correcting all deficiencies within three (3) calendar days after written or oral notification from the authorized FDNY representative.

IV. GENERAL TERMS AND CONDITIONS

- A. All Services pursuant to this Agreement shall be performed in accordance with all applicable Federal, State and local laws, rules and regulations, and the Contractor shall meet or exceed industry standards.
- B. The Contractor shall coordinate the performance of Services with the FDNY Authorized Representative.
- C. The Contractor shall not be permitted to drive vehicles onto FDNY property without the express permission of the FDNY Authorized Representative.
- D. All Contractor Employees shall sign an FDNY logbook upon arrival and departure from an FDNY Facility. A FDNY Authorized Representative will verify the arrival and departure times and countersign the logbook entries. The Contractor will not be compensated without such verification.
- E. This Agreement is not intended to create any rights in third parties other than successors and assignees of the parties.
- F. In the event of the termination of this Agreement, the Contractor shall remain liable for the full performance of all terms and conditions of this Agreement that the Contractor was obligated to perform up to the time of such termination. Any and all continuing obligations and liabilities of the Contractor under this Agreement shall survive the termination of this Agreement.

V. CONTRACTOR QUALIFICATIONS

- A. The Contractor shall possess a minimum of three (3) years experience in providing temporary medical personnel for at least three (3) commercial organizations or governmental agencies at the time of the bid submission.
- B. At the time of the bid opening, the Contractor shall be a hospital or a professional corporation consisting of doctors.
- C. Individual experience as a principal, director, officer or employee of an organization may not be used to satisfy this requirement.
- D. The Contractor shall utilize qualified personnel with sufficient experience in the professions specified by this Agreement and who possess the licenses required by applicable Federal, State and City laws, rules and regulations.
- E. All Contractor Employees shall possess the ability to effectively communicate with patients and with FDNY personnel.

- F. All Contractor Employees shall be familiar with and comply with the procedures and guidelines established by the Centers for Disease Control and other applicable laws, rules and regulations for the control of medical waste and decontamination.
- G. FDNY will notify the Contractor of any Contractor Employee who, in the opinion of FDNY, is not performing satisfactorily. The Contractor shall remove such personnel forthwith upon receipt of notification. If requested, the Contractor shall fill the vacancy with another Contractor Employee who has the qualifications and is approved to perform the required tasks.
- H. Contractor Employees shall at all times remain employees of the Contractor and shall not be considered employees of FDNY or the City of New York. The Contractor shall be solely responsible for their personal conduct, compensation and all other terms and conditions of employment, including Workers' Compensation and disability coverage.
- I. Job Descriptions:
 - 1. Consultant Physicians:
 - a. All physicians performing services pursuant to this Agreement shall be licensed to practice medicine in the State of New York, possess a medical degree from an accredited institution and shall have a minimum of three (3) years of recent experience in conducting consultant or primary care physician services. The Contractor shall provide, on an as-needed basis, Consultant Physicians who are either General Practice Consultant Physicians or Specialty Consultant Physicians. General Practice Consultant Physicians shall be Board Eligible or Board Certified in one of the following medical specialties: Internal Medicine, Family Practice or Occupational Medicine. Specialist Consultant Physicians shall be Board Certified in one of the following medical specialties: Pulmonary, Cardiology, Orthopedics or Psychiatry. Board Eligibility is not acceptable after four (4) years.
 - b. Consultant physicians providing services shall also possess a valid Drug Enforcement Administration (DEA) controlled substance registration certificate and, in accordance with New York State Public Health Law section 21, official New York State prescription pads.
 - c. The duties of the General Practice Consultant Physicians shall include but are not limited to:
 - i. General medical examinations for occupational fitness, research, or other purposes;
 - ii. Patient histories;
 - iii. Medical record review;
 - iv. Preparation of notes and other documentation;

- v. Medical data analysis;
 - vi. Ordering diagnostic medical tests;
 - vii. Performing non-invasive medical tests;
 - viii. Issuing prescriptions for medication;
 - ix. Referrals for specialized medical testing, examinations and/or other treatment;
- d. The duties of the Specialist Consultant Physicians shall include all of the services listed above and the following additional services:
- i. Specialized medical examination;
 - ii. Specialized medical testing.

VI. 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 complete the Services pursuant to his Agreement. Contractor Employees shall have the training and demonstrated ability in the specified areas, and possess all required licenses, permits, and all other applicable certificates and qualifications at the time of the bid submission.
- B. 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.
- C. 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.
- D. The Department reserves the right to review the credentials and qualifications of any Contractor Employees 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.
- E. The Contractor shall comply with all FDNY security rules. Contractor Employees shall wear clearly visible photo identification and shall comply with the FDNY security procedures and directions at FDNY Facilities.
- F. Contractor Employees shall report to the FDNY Authorized Representative upon arrival at the FDNY Facility and sign the logbook. Contractor Employees shall sign the Fire Department logbook as follows:

Sign-in: When reporting to the site to perform work.
 Sign-out: At the start of a lunch break.

Sign-in: Upon resuming work after completion of a lunch break.
Sign-out: Upon completion of the workday.
Sign-out: Upon leaving the job location for any reason.
Sign-in: Upon returning to job location.

VII. CONFIDENTIALITY

- A. 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 medical records containing protected health care information ("Confidential Information"). All Confidential Information is the property of the FDNY, and the Contractor shall 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 FDNY.
- B. The Contractor shall instruct its officers, employees, and agents, to maintain the confidentiality of any and all Confidential Information and shall distribute a copy of FDNY's A.U.C. 334/EMSC OGP 113-05, "Confidentiality, Use and Disclosure of Patient Health Information" (attached hereto as Attachment A) to Contractor Employees.
- C. Any data or information received by Contractor Employees shall become and remain the property of FDNY and shall not be removed from FDNY premises or disclosed to any third parties, except as authorized in writing by the FDNY Authorized Representative.
- D. Upon expiration or termination of this Agreement, the Contractor shall return to the Department any and all Confidential Information in the possession of the Contractor, and permanently delete any and all Confidential Information maintained in any electronic form by the Contractor.
- E. A breach of this section shall constitute a material breach of this Agreement for which FDNY may terminate the Agreement. FDNY reserves any and all other rights and remedies in the event of unauthorized disclosure.
- F. This provision shall survive the expiration or termination of this Agreement.

VIII. COMPENSATION

- A. The Contractor shall submit a fixed mark-up rate that is inclusive of all overhead and other costs of providing the services pursuant to this Agreement. The Fire Department shall compensate the Contractor for Contractor Employee services at the net employee hourly wage rate multiplied by the number of hours worked, plus the Contractor mark-up rate as set forth in the bid price schedule. The hourly rate paid to Contractor Employees shall be established by the Contractor in consultation with the Fire

Department. To be considered responsive, the Contractor shall provide pricing for all labor categories.

- B. The Fire Department will not guarantee any minimum quantity of hours, Contractor Employees, or a monetary volume. The Fire Department reserves the right to increase or decrease the number of Contractor Employees or hours in any title, according to the requirements of the Fire Department, at any time during the Agreement.
- C. Contractor Employees shall be paid at a straight-time rate. Contractor Employees shall not be allowed to work hours that, by law, would require compensation at overtime rates, without written permission of the Agency Chief Contracting Officer.
- D. The total hourly billing rate (net labor rate plus Contractor mark-up) shall be fully burdened and shall include, but not be limited to, the wage rate paid to the Contractor Employee, statutory Contractor payments such as Social Security and Worker's Compensation, fringe and vacation benefits, all Contractor overhead and expenses, and the Contractor's profit. Fringe or vacation benefits provided to Contractor Employees are the sole obligation of the Contractor and are not a mandatory requirement under this Agreement. The hourly billing rate will be a firm, all-inclusive hourly compensation rate from the Fire Department for services performed by Contractor Employees. The hourly Contractor mark-up will remain fixed for the duration of the contract. These rates will not be subject to any addition, percentage multipliers, or cost of living increases. No other modification to the mark-up or any other mark-up other than those listed in the bid price schedule shall be permitted.
- E. The total contract amount of this Agreement shall be the total bid amount of the winning bid, and all charges for services pursuant to the Agreement shall not exceed such amount. The actual compensation paid to the Contractor pursuant to this Agreement by the Fire Department for services actually requested by the Fire Department and provided by the Contractor. Hours chargeable to this contract shall include only the actual hours worked by all Contractor Employees assigned under the Agreement.
- F. The Contractor shall submit invoices and time sheets on a weekly basis for payment. The Contractor shall print the contract number on each invoice and list the names of Contractor Employees who provided services in alphabetical order, with the job title, rate of pay, mark-up, total hours, and total amount due.
- G. FDNY shall not incur a payment obligation for the first eight (8) hours of work if the Contractor Employee is removed by reason of unsatisfactory performance pursuant to Section V(G) of this Agreement.

IX. MEDICAL MALPRACTICE INSURANCE

- A. In addition to the insurance requirement set forth in Appendix A, General Terms and Conditions, Article 7, the Contractor shall ensure that each Contractor Employee shall maintain, at no expense to the FDNY or the City of New York, separate professional

liability medical malpractice insurance in the amount of not less than one million dollars (\$1,000,000.00) per occurrence and a minimum aggregate of three million dollars (\$3,000,000.00) in the aggregate. The insurance policies shall be obtained from a company or companies duly licensed to do business in the State of New York

- B. The Contractor shall ensure that such medical malpractice insurance policy covers all claims, liability, judgments, damages and expenses arising from the professional services of the Contractor Employees provided by the Contractor pursuant to this Agreement.
- C. In addition to the insurance requirement set forth in Appendix A, General Terms and Conditions, Article 7, the Contractor shall obtain and maintain, at its own expense, error and omissions insurance covering the Contractor for acts, errors or omissions of the Contractor in the performance of the Services, in an amount of a minimum of one million dollars (\$1,000,000) per occurrence, with a minimum policy aggregate of two million dollars (\$2,000,000). This policy shall specifically include the Contractor obligation to ensure that each physician is duly licensed and maintains a medical malpractice insurance policy in accordance with the requirements of this Agreement. The Contractor shall provide the Fire Department with valid insurance certificates evidencing the coverage required by this Agreement prior to the commencement of Services. The policy shall contain no exclusions or endorsements that are not acceptable to the City and FDNY and shall be in a form and issued by an insurance company acceptable to the City and FDNY. Notice to the errors and omissions insurance carrier by either the Fire Department or Contractor shall be deemed sufficient notice under the policy. The insurance policy shall be obtained from a company or companies duly licensed to do business in the State of New York and shall possess a minimum Best's credit rating of A-.
- D. The Contractor shall provide satisfactory proof of medical malpractice coverage for all Contract Employees who perform services pursuant to the Agreement, to the FDNY Authorized Representative, prior to the Contractor Employee's initial start date, and update such proof as necessary. The Fire Department reserves the right to request copies of the medical malpractice insurance policies or certificates of insurance coverage. The Contractor shall ensure that the Contractor Employees will cooperate in obtaining such policies and certificates.
- E. The Contractor shall ensure that the Contractor Employee's medical malpractice insurance policy provides such as follows:
 - 1. The policy retroactive date coincides with or precedes the Insured's initial services under the Agreement and shall continue until termination of the Agreement (including subsequent policies purchased as renewals or replacements).
 - 2. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

3. The policy allows not less than a three (3) year extended reporting period with respect to events which occurred but were not reported during the term of the policy.
 4. Notice to the Contractor Employee's medical malpractice insurance carrier by either Fire Department, Contractor, or Contractor Employees shall be deemed sufficient notice under the policy.
- F. The Contractor shall report to the FDNY Authorized Representative in writing within one (1) business day of learning or being made aware of any claims, patient complaints, physician communication or other circumstances that could reasonably anticipate or result in a claim against the City or the FDNY arising from the acts, errors or omissions of the Contractor Employee or the Contractor pursuant to the Agreement. The Fire Department, at its sole discretion, may provide notice of such claims directly to the medical malpractice insurance carrier and/or the Contractor's errors and omissions insurance carrier. Notice to the medical malpractice insurance carrier by either Fire Department, Contractor, or Contractor's employee shall be deemed sufficient notice under the policy.

X. LIQUIDATED DAMAGES

- A. If the Contractor fails to provide qualified personnel for the hours and type of Services requested herein, within (24) twenty-four hours from notification by the FDNY Authorized Representative, then the Contractor shall be subject to fixed and liquidated damages of \$50.00 (fifty dollars) per hour for each hour that the Contractor Employee fails to report for the assignment.
- B. 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 the damages due the City.
- C. If the Contractor fails to provide the requested Services, the Agency Chief Contracting Officer has the right to procure the required Services from another vendor. The Contractor shall be liable, in addition to liquidated damages, for the full amount in excess of the Contract price, which FDNY pays for such alternative services. FDNY shall deduct this sum from any monies due or that shall become due to the Contractor under this Agreement. The amount due pursuant to this provision shall be in addition to the liquidated damages due for failure to provide qualified personnel, which liquidated damages shall continue to accrue until such alternative services are obtained.

XI. TERM OF AGREEMENT

- A. The Agreement shall be for a period of five (5) consecutive years effective from the date of Notice to Proceed until the expiration of, unless otherwise cancelled or terminated.

1. PURPOSE AND SCOPE

- 1.1 This policy and procedure sets forth the Fire Department's policy with respect to preserving the confidentiality of patient health information generated in connection with the provision of pre-hospital emergency medical treatment and transport in the New York City 911 System, and procedures for the authorized use and disclosure of such information. This policy and procedure also applies to employee health records and information to the extent set forth in Section 1.4 below.
- 1.2 This policy and procedure applies to all:
 - ◆ Fire Department Emergency Medical Service personnel;
 - ◆ Fire Department uniformed firefighting personnel who provide Certified First Responder –Defibrillation (CFR-D) patient care; and
 - ◆ Fire Department administrative personnel and others who process, use, disclose, maintain or have access to patient health information or employee health records, including those assigned to perform operational, medical, legal, investigative, revenue, privacy and recordkeeping management, oversight and other functions.
- 1.3 Voluntary hospital personnel who provide pre-hospital emergency medical treatment and transport in the New York City 911 System shall preserve the confidentiality of patient health information, and may use and disclose such information, in accordance with their hospital's own policies and procedures (provided that those policies and procedures are consistent with applicable New York State and Federal health care privacy laws and regulations, and are not less strict than those set forth herein).
- 1.4 Fire Department employee health records and information, including the Medical Folders, Member Injury Reports and Workers' Compensation records maintained by the Bureau of Health Services and the health insurance records of the Health Benefits Unit of the Bureau of Personnel Resources, are not patient health information and are not covered by the federal health care privacy (HIPAA) regulations discussed below. However, such employee health records do contain medical information necessary for fitness for duty determinations, health insurance coverage and other employment-related purposes. The confidentiality of such employee health records and medical information shall be maintained. Such records and information shall be only be used and disclosed for official Fire Department purposes in accordance with the procedures established by the bureaus that maintain such records, and shall only be disclosed to those Fire Department personnel, health care providers and other persons specifically authorized to receive such information. All other use and disclosure of employee health records, including all third party requests for disclosure of Medical Folders and health benefits information, shall be handled in accordance with Sections 1 through 15 of this policy and procedure.
- 1.5 This policy and procedure does not address the requirements for the physical security in the workplace of patient care documentation and other patient health information. Such security issues are addressed in a separate Fire Department policy and procedure, "Security of Medical Information."

2. POLICY

- 2.1 It is the policy of the Fire Department to preserve the confidentiality of patient health information and to use and disclose such information only for such purposes as are authorized by law and regulation.
- 2.2 All Fire Department personnel who obtain, maintain or have access to patient health information, including patient communications and patient care documentation, shall preserve the confidentiality of such information and shall only use and disclose such information in accordance with this policy and procedure.
- 2.3 Fire Department personnel shall not respond to requests for patient care documentation or other patient health information, whether from members of the public, governmental agencies or others, except as provided in this policy and procedure.
- 2.4 Fire Department personnel shall comply with requests for patient health information from the Fire Department's Bureau of Legal Affairs, Bureau of Investigations and Trials, Bureau of Operations, Office of Medical Affairs, Office of Compliance and Management Analysis and Planning Unit, and from the Fire Department Inspector General's Office, in accordance with the provisions of this policy and procedure. Requests from other Fire Department personnel for such information shall be referred to the Bureau of Legal Affairs.
- 2.5 Any provision of any Fire Department policy, procedure, regulation, manual or other directive that authorizes the use or disclosure of patient health information (as that term is used in this policy and procedure) in a manner inconsistent with the provisions of this policy and procedure is hereby superseded.

3. INTRODUCTION: CONFIDENTIALITY OF PATIENT HEALTH INFORMATION UNDER THE NEW YORK STATE PUBLIC HEALTH LAW AND FEDERAL HEALTH CARE (HIPAA) PRIVACY REGULATIONS

- 3.1 New York State has longstanding legal requirements governing the confidentiality of patient health information. These requirements are set forth in the New York State (NYS) Public Health Law and regulations promulgated by the New York State Department of Health.

- 3.2 The NYS Public Health Law restricts disclosure of patient health information to third parties without the consent of the patient or the patient's legal guardian. However, the law generally authorizes use of patient health information without patient consent for purposes of treatment, billing and reimbursement, quality assurance, and compliance with court orders and other legal requirements. The NYS Public Health Law also affords patients the right to access and correct their medical records, subject to various restrictions and procedures.
- 3.3 In 1996, the Federal government enacted a law designed to establish uniform national standards for identifying patients and coding diagnoses to facilitate and regulate the sharing of patient health information by electronic means by health care providers, insurance companies and related services. The law, known as the Health Insurance Portability and Accountability Act (HIPAA), also recognized the challenges to maintaining the confidentiality of health information presented by the increasing complexity of the health care industry and by advances in the health information technology and communications (such as computerized medical records and the Internet). In 2002, the United States Department of Health and Human Services (HHS) promulgated new regulations, entitled "Standards for Privacy of Individually Identifiable Health Information," to implement HIPAA's confidentiality provisions. These HIPAA regulations are codified as Parts 160 and 164 of Title 45 of the Code of Federal Regulations, and became effective on April 14, 2003.
- 3.4 The confidentiality requirements of the NYS Public Health Law remain in effect notwithstanding the promulgation of the HIPAA privacy regulations. The HIPAA privacy regulations generally supersede corresponding NYS Public Health Law provisions when the HIPAA regulations are stricter.
- 3.5 The HIPAA privacy regulations only apply to certain individuals and entities that generate or process patient health information electronically. In order to be a "covered entity" subject to the HIPAA regulations, one must be either a health plan, a health care clearinghouse, or a health provider who transmits patient health information in electronic form in connection with health care benefits, claims, payments, plan eligibility and enrollment and other "covered transactions."
- 3.6 The Fire Department is a health care provider with respect to its EMS operations and it transmits patient health care information electronically in connection with its billing for ambulance services. As such, the Fire Department is subject to the HIPAA privacy regulations with respect to 911 patient health information. All persons who obtain, maintain or have access to such information are subject to those regulations.
- 3.7 Adherence by Fire Department personnel with the provisions of this policy and procedure will ensure compliance with the confidentiality requirements of both the NYS Public Health Law and the HIPAA privacy regulations.
- 3.8 The HIPAA privacy regulations make use of the term "protected health information" to refer to the patient information of "covered entities" subject to the HIPAA privacy regulations. To avoid any confusion as to whether and which patient information is "protected," this policy and procedure instead uses the term "patient health information," to refer to any and all information relating to the patient or to patient treatment or transport.

3.9 The HIPAA privacy regulations require that covered entities designate a Privacy Officer responsible for ensuring compliance with the provisions of such regulations. The Fire Department has designated its Chief Compliance Officer as its HIPAA Privacy Officer.

4. GENERAL STANDARDS FOR USE AND DISCLOSURE OF PATIENT HEALTH INFORMATION

4.1 Under both NYS Public Health Law and the HIPAA privacy regulations, patient health information may be disclosed without patient consent for purposes of patient treatment, health care operations and payment (i.e., billing for services rendered). “Health care operations” includes the management and oversight of the provision of patient care and the maintenance of patient health information, including operational, medical, legal, investigative, privacy and recordkeeping functions. Use and disclosure of patient health information is authorized for official Fire Department business as set forth in this section and in Sections 5 through 15 of this policy and procedure.

4.2 Fire Department personnel may, if necessary, disclose identifiable patient health information to the Fire Department’s “business associates,” that is, non-Fire Department persons or companies that provide legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services to the Fire Department. There must be a “business associate” agreement containing certain specific HIPAA protections in place with such person or company before the Fire Department can disclose identifiable patient health information to a business associate.

4.3 The use and disclosure of patient health information shall be limited to the minimum amount of information needed for the purpose for which it is to be used, or responsive to the disclosure requested. Patient health information shall not be disclosed to any Fire Department personnel who do not require the information for official Fire Department business.

4.4 Statistical reports and other agency records that do NOT contain any information that identify the patient (including name, address, telephone number, social security number, and date of birth) or detailed information about the patient that in combination could potentially be used to identify the patient (such as date of service, ambulance destination and medical condition) are not considered patient health information and are not subject to the use and disclosure restrictions of the NYS Public Health Law or HIPAA privacy regulations.

4.5 Under the NYS Public Health Law and the NYS Civil Practice Law and Rules, and consistent with the HIPAA privacy regulations, patient health information may only be obtained for purposes other than official Fire Department business, as follows:

4.5.1 The patient, his or her legal guardian, or a conservator, executor or administrator appointed by a court, may obtain a copy of the patient’s Ambulance Call Report (ACR) by completing a notarized authorization for release of such information. The procedures for obtaining the ACR are set forth in the Patient Information Disclosure and Assignment of Claim part of the ACR form (green Patient Copy), and in Section 16.5 of this policy and procedure.

4.5.2 Third parties may obtain a patient ACR only by obtaining a notarized patient authorization, or by serving an appropriate subpoena as discussed below at Section 16.5 of this policy and procedure. Fire Department personnel shall not respond to a subpoena for patient health information, but shall forward any such subpoena to the Fire Department's Bureau of Legal Affairs at Fire Department Headquarters for review.

5. EMS PATIENT CARE AND PATIENT CARE DOCUMENTATION

5.1 EMS personnel come into possession of patient health information through their communications with the patient, the patient's family and/or others present at the time of patient contact. EMS personnel may also have occasion to receive or examine patient medical records. EMS personnel also generate patient health information through the preparation of an ACR.

5.2 EMS personnel providing patient care are required to maintain the confidentiality of all such patient health information and documentation. They can protect the confidentiality of such information and documentation by only disclosing such information in connection with patient treatment and this policy and procedure, and by complying with the ACR Manual and all applicable Department policies and procedures governing the distribution of completed ACRs.

5.3 EMS On-Scene Communications

5.3.1 Health Care Providers. The laws and regulations governing the confidentiality of patient health information are not intended to interfere with patient care. Patient health information may be disclosed to any and all persons involved in the patient's care, whether they are health care providers (including ambulance personnel, dispatchers, certified first responders, on-line medical control personnel, physicians, physician assistants and nurses), or family members or other persons providing patient care or lawfully making health care decisions for the patient (such as a person designated as the patient's health care proxy or presenting a NYS Department of Health pre-hospital do not resuscitate (DNR) order signed by the patient).

5.3.2 On-Scene Operations and Incident Command. Patient health information may be disclosed to EMS supervisors and incident command personnel in connection with patient triage and other on-scene operational or incident management issues affecting patient treatment. Disclosure should be limited to the minimum information necessary to address the operational or incident management need.

5.3.3 Bystanders. Reasonable efforts should be made to maintain the confidentiality of patient health information when providing patient care in the presence of persons who are not involved in patient care. If circumstances allow, conversations should be conducted in a muted tone of voice. Bystanders may be asked (directly or through a police officer or other person of authority) to step away from the patient to protect the patient's privacy.

- 5.3.4 Police. The NYS Public Health Law and HIPAA privacy regulations authorize disclosure of certain specified information about a patient to the police, Fire Marshals or other law enforcement agency or official conducting an investigation of a crime or incident (including a vehicle accident), when it is needed to identify or locate a suspect. Patient health information may be disclosed to law enforcement officers at the scene of an incident, as follows:
- A. In all cases, the date and time of treatment (or death, if known); patient name and address; date and place of birth; social security number; blood type (A, B or O) and rh factor; type of injury; and a description of distinguishing physical characteristics (including height, weight, gender, race, hair and eye color, facial hair, scars and tattoos) may be disclosed.
 - B. In cases where the patient is a crime victim, or is suspected of being a crime victim, all relevant patient health information may be disclosed to a law enforcement official at the scene of an emergency medical response, as necessary to alert law enforcement to the commission and nature of a crime; the location of such crime or of the victim of such crime; and the identity, description and location of the perpetrator of such crime. This provision does not apply in non-emergency situations.
- 5.3.5 Abuse and Neglect Reporting. Disclosure of patient health information to the Emergency Medical Dispatch Unit of the Fire Department's Bureau of Communications for purposes of complying with the applicable mandated reporting provisions of the New York State Social Services Law is authorized by both NYS law and the HIPAA privacy regulations.
- 5.3.6 Press Inquiries. Patient health information shall not be disclosed to the press or other third parties, except as authorized by the Fire Department's Public Speaking and Press Policy.
- 5.4 Ambulance Call Reports. ACRs shall be turned over only to the EMS ambulance supervisor and authorized agent at the receiving hospital (or morgue supervisor), as set forth in all applicable all applicable Department policies and procedures. The Patient Health Information Disclosure and Assignment of Claim notice (the green Patient Copy that is the last part of the multi-part ACR form) shall be given to the patient. The notice may be provided to a family member or other person accompanying the patient if the patient is incapable of accepting it, or left with the patient at the receiving hospital.
- 5.5 Subsequent Communications. Disclosure of patient health information (other than to Fire Department personnel) should cease once the patient transport has been accepted from the ambulance destination, or all patient contact has concluded. Fire Department personnel may, using appropriate discretion, disclose patient health information during the remainder of the tour to persons (such as police investigators) who would have been entitled to receive such information at the scene of the incident (see Section 5.3.4 above). Thereafter, all requests for information should be referred to EMS Operations or Legal Affairs, as set forth below in Section 8, 9, 14 and 16.5 of this policy and procedure.

6. CFR-D PATIENT CARE AND PATIENT CARE DOCUMENTATION

- 6.1 Firefighters responding to medical emergencies as Certified First Responders-Defibrillation (CFR-D) are providing patient care. Both their patient communications and the Patient Care Reports (PCRs) that they complete constitute patient health information whose confidentiality must be maintained in accordance with the provisions of this policy and procedure.
- 6.2 PCRs shall be completed and forwarded in accordance with all applicable Department policies and procedures, including the CFR-D Manual.
- 6.3 CFR-D personnel shall comply with the provisions governing On-Scene Communications set forth in Section 5.3 above.
- 6.4 PCRs and other patient health information may be disclosed to supervisors in the member's chain of command, or other appropriate Fire Department personnel, where such disclosure is necessary for operational reasons, or where required to comply with CFR-D, unusual occurrence, mandated reporting procedures, or other communications in which patient care or personnel performance is at issue.
- 6.5 The number of injured persons or types of injuries may be included in Fire Incident Reports or other routine reports or memoranda, but the names of the patients or other identifiable patient health information shall not be included in, or attached to such reports.
- 6.6 Engine company, battalion and division personnel shall not respond to requests for PCRs or other patient health information, whether from members of the public, governmental agencies or others. All such requests should be referred to EMS Operations or Legal Affairs, as set forth below in Sections 8, 9, 14 and 16.5 of this policy and procedure.

7. EMS BATTALIONS AND DIVISIONS

- 7.1 Patient health information may be disclosed to EMS supervisors, ACR review specialists and others whose duties involve supervision of personnel, patient care and/or patient care documentation. Such exchange of information is part of the health care operations for which the NYS Public Health Law and the HIPAA privacy regulations authorize disclosure of patient health information.
- 7.2 ACRs shall be processed and forwarded in compliance with the procedures set forth in all applicable Department policies and procedures.
- 7.3 ACRs may be attached to Unusual Occurrence Reports and other official correspondence in which patient care or personnel performance is at issue.

- 7.4 ALL patient identifying information shall be blacked out on copies of ACRs retained at the EMS battalion or division for Continuing Medical Education (CME) purposes. Such copies shall not be used for any other purpose or disclosed to any person other than EMS personnel participating in an authorized Fire Department CME program, and shall be shredded or otherwise rendered unreadable and properly disposed of when its retention is no longer required.
- 7.5 Battalion and division personnel shall not respond to requests for patient health information from members of the public, governmental agencies or others. All such requests should be referred to EMS Operations or Legal Affairs, as set forth below in Sections 8, 14 and 16.5 of this policy and procedure.

8. EMS OPERATIONS

- 8.1 Fire Department personnel assigned to EMS Operations at Fire Department Headquarters (“EMS Operations personnel”) regularly require and use patient health information in order to: (a) investigate incidents and unusual occurrences involving EMS and CFR-D personnel or the provision of patient care; (b) ensure compliance with EMS Operating Guide Procedures and other operational and administrative requirements; (c) evaluate the quality of patient care provided, including quality assurance and quality improvement purposes; and (d) for other health care operations.
- 8.2 EMS Operations personnel from time to time may be contacted by family members or other representatives of a patient or deceased patient. It is appropriate for EMS Operations personnel to respond to such communications, either to address patient care issues or for risk management purposes. However, such requests must be carefully evaluated to determine whether disclosure of patient health information to the family member or representative is appropriate. In some cases it will be evident, either from information obtained from EMS personnel at the scene, from the ACR, or from documentation provided by the individual, that the individuals were involved in the patient’s care or are entitled to receive patient health information. Where it is not evident, EMS Operations personnel shall consult with Legal Affairs before disclosing any patient health information.
- 8.3 EMS Operations personnel shall not disclose patient health information to non-Fire Department personnel, except as authorized by the Chief or Assistant Chief of EMS Operations as necessary for EMS or CFR-D health care operations. EMS Operations personnel shall not otherwise disclose patient health information except in accordance with the standards set forth in Sections 2 and 4 of this policy and procedure.

9. FIRE OPERATIONS

- 9.1 Fire Department personnel assigned to Fire Operations at Fire Department Headquarters (“Fire Operations personnel”) regularly require and use health information in connection with the Fire Department’s CFR-D health care operations.
- 9.2 Fire Operations personnel shall not disclose patient health information to non-Fire Department personnel, except as authorized by the Chief of Department or Chief of Operations Assistant as necessary for CFR-D health care operations. Fire Operations personnel shall not otherwise disclose patient health information except in accordance with the standards set forth in Sections 2 and 4 of this policy and procedure.

10. COMMUNICATIONS

- 10.1 EMS personnel and other Fire Department personnel assigned to call receiving, dispatch and other functions in the Emergency Medical Dispatch Unit (EMD) of the Bureau of Communications or other Bureau of Communications offices (“Communications personnel”) receive patient information through radio communications with 911 callers, Fire Department and voluntary hospital personnel providing emergency medical treatment and transport in the New York City 911 System, and others.
- 10.2 Communications personnel may disclose patient health information to ambulance destinations, private physicians, and others in connection with the provision of patient care.
- 10.3 Communications may relay on-scene communications containing patient health information to the New York City Police Department or other law enforcement agency, as authorized by Section 5.3.4 of this procedure.
- 10.4 Patient health information may also be disclosed to the Administration for Children’s Services or to the New York State Department of Social Services for purposes of complying with the applicable provisions of the New York State Social Services Law.
- 10.5 Communications personnel shall not disclose communications records or information that contain patient health information where the patient is identifiable, except in accordance with the standards set forth in Sections 2 and 4 of this policy and procedure.

11. MEDICAL OVERSIGHT AND ON-LINE MEDICAL CONTROL

- 11.1 The NYS Public Health Law mandates medical oversight of all ambulance service operations, including Fire Department EMS and CFR-D operations. Such medical oversight is provided by the physicians and other Fire Department personnel assigned to the Office of Medical Affairs at Fire Department Headquarters (“OMA personnel”), and to the Office of Medical Affairs’ On-Line Medical Control (Telemetry) facility (“OLMC personnel”).

- 11.2 OMA personnel regularly require and use patient health information in order to monitor compliance with regional medical protocols, OMA Medical Directives and other laws, rules and regulations governing the provision of health care by Fire Department personnel, including investigating incidents and unusual occurrences involving the provision of patient care; for quality assurance and quality improvement (“QA/QI”) purposes; and for other health care operations. In addition, OMA personnel may engage in research studies utilizing Fire Department patient health information.
- 11.3 OLMC personnel provide medical guidance to Fire Department and voluntary hospital ambulance personnel engaged in the provision of patient care, and receive patient health information through communications with such personnel, police officers, family members, private physicians and others.
- 11.4 OMA and OLMC personnel may disclose patient health information in connection with their patient care or QA/QI responsibilities, including communications with patients, health care providers, mandated reporting agencies and other parties authorized under the New York State Public Health Law to participate in such patient care and QA/QI activities. OMA and OLMC personnel shall not otherwise disclose communications or other records that contain patient health information where the patient is identifiable, except in accordance with the standards set forth in Sections 2 and 4 of this policy and procedure.
- 11.5 The NYS Public Health Law, the HIPAA privacy regulations and other federal regulations impose significant restrictions on the use of patient health information for research purposes. ACRs and other patient health information from which any information that would identify the patient, or could be used to identify the patient, as set forth in Section 4.3 of this policy and procedure and more fully detailed in the HIPAA privacy regulations, may be used for research purposes without patient consent. Patient health information shall be used for research purposes by OMA, OLMC or other Fire Department personnel only with the prior written review and approval of the Assistant Commissioner for Emergency Medicine in consultation with Legal Affairs.

12. BILLING FOR PATIENT HEALTH CARE

- 12.1 The Fire Department bills patients, health insurance companies, and Medicare for ambulance services. It does not bill for firefighter CFR-D responses.
- 12.2 The Fire Department’s Bureau of Revenue Management oversees such billing activity. Revenue Management personnel utilize patient health information for diagnostic coding and medical necessity determinations relating to billing. Revenue Management also discloses patient health information to outside contractors utilized by the Fire Department for billing and billing-related purposes. Patient consent is not required for such use and disclosure of patient health information for payment purposes.

- 12.3 Revenue Management personnel are authorized to use and disclose patient health information solely for billing purposes. They shall not use or disclose patient health information to any other person or for any other purpose, except in accordance with the standards set forth in Sections 2 and 4 of this policy and procedure.

13. INVESTIGATIONS AND COMPLIANCE

- 13.1 The Fire Department's Bureau of Investigations and Trials (BITS) investigates and prosecutes misconduct by Fire Department personnel, including misconduct in the provision of EMS services.
- 13.2 The Fire Department's Compliance Unit conducts audits of all Fire Department bureaus for management, financial, integrity and statutory compliance purposes, including compliance with the federal health care regulations governing billing for patient health care.
- 13.3 These functions relate to the health care operations of the agency and patient health information may be required and used in performing such functions.
- 13.4 BITS may disclose patient health information in connection with its prosecution of employee misconduct, but shall undertake to protect patient privacy by deidentifying the patient health information whenever possible. Otherwise, patient health information where the patient is identifiable shall be disclosed only where it is determined by the Assistant Commissioner for Investigations and Trials, in consultation with Legal Affairs, that such disclosure is legally mandated for compliance with statutes and regulations applicable to Fire Department, or in accordance with the standards set forth in Sections 2 and 4 of this policy and procedure.
- 13.5 Compliance Unit personnel shall disclose patient health information only where it is determined by the Chief Compliance Officer, in consultation with Legal Affairs, that such disclosure is legally mandated for compliance with statutes and regulations applicable to Fire Department, or in accordance with the standards set forth in Sections 2 and 4 of this policy and procedure.

14. INFORMATION SERVICES

- 14.1 The Fire Department's Bureau of Technology Development and Systems (BTDS) is responsible for developing and maintaining the Fire Department's computer infrastructure, including informational databases.
- 14.2 The Fire Department maintains patient health information in electronic form, both in connection with the Fire Department's Computer Aided Dispatch (CAD) System and its imaging and indexing of ACRs.

- 14.3 BTDS personnel must have access to patient health information in order to undertake the computer programming and other functions necessary to develop and maintain these informational databases, but do not require use of patient health information to carry out their duties.
- 14.4 BTDS personnel grant access to other Fire Department personnel to informational databases containing patient health information. BTDS personnel shall not grant such access unless such access is requested and approved in writing in accordance the Fire Department's authorization procedure for access to such information, to be established by the Assistant Commissioner for Technology and Support Services in consultation with Legal Affairs and the Privacy Officer.
- 14.5 BTDS personnel shall not use or disclose patient health information except in accordance with the standards set forth in Sections 2 and 4 of this policy and procedure.

15. LEGAL MATTERS

- 15.1 Personnel assigned to the Fire Department's Bureau of Legal Affairs ("Legal Affairs personnel") regularly require and use patient health information in connection with its provision of legal guidance and counsel to agency personnel; its representation of the Fire Department in the prosecution or defense of legal claims, complaints and lawsuits and/or the assistance it provides to the New York City Law Department, Office of the Comptroller and other authorized representatives of the City in such matters; its processing of subpoenas and other compulsory legal process mandating the disclosure of ACRs or other patient health information; in its disclosure of patient health information to patients or others with patient authorizations to receive ACRs; or other Fire Department legal matters.
- 15.2 Legal Affairs personnel may disclose patient health information to agency personnel, the New York City Law Department personnel, and third parties with valid subpoenas or properly executed authorizations, and to such as other persons and for such other purposes as authorized by the Deputy Commissioner for Legal Affairs, Counsel to the Department, or other agency counsel, in accordance with applicable laws, rules and regulations, and the standards set forth in Sections 2 and 4 of this policy and procedure.

16. PATIENT RIGHTS

- 16.1 Patient Rights
 - 16.1.1 The HIPAA privacy regulations provide for a right of access to medical records and other patient health information and other rights. The HIPAA privacy regulations generally will govern patient access to such records and information, with some exceptions (such as psychotherapy notes and parental access to a child's health information).

16.1.2 The HIPAA privacy regulations require that covered entities provide to their patients a Notice of Privacy Practices, setting forth how their health information will be used and disclosed. This section incorporates the provisions of the Fire Department's Notice of Privacy Practices, which advises each person who receives pre-hospital emergency medical treatment and transport in the New York City 911 System of how their patient health information will be used and disclosed, and how they can seek to access, amend, obtain an accounting, or restrict use or disclosure of such information.

16.1.3 This section does not supercede the specific procedures and restrictions set forth in Sections 1 through 15 of this policy and procedure. Fire Department personnel shall comply with those specific procedures and restrictions in their use and disclosure of patient health information.

16.2 Notice of Privacy Practices

16.2.1 Health care providers subject to the HIPAA privacy regulations are required to provide to their patients a "Notice of Privacy Practices" that sets forth the patient's rights with respect to their patient health information, and the purposes for which such information may be used and disclosed.

16.2.2 The Fire Department has implemented this requirement by adding a fourth part to the ACR form. This "Patient Copy" contains the required disclosures. This form should be given to the patient, and the patient should be asked to sign the "Patient Information Disclosure and Assignment of Claim" section on the reverse of the original ("Ambulance Copy") of the ACR form, all applicable Department policies and procedures. The ACR section should be signed by a member of the ambulance crew in accordance with the provisions of that procedure if the patient is unable or unwilling to sign the form.

16.2.3 A more detailed Notice of Privacy Practices has also been posted on the Fire Department's Internet web site: www.nyc.gov/fdny. All Fire Department personnel may advise a member of the public of the availability of the Notice of Privacy Practices on the web site, or by writing to the Fire Department's Privacy Officer. Patients and others requesting additional information regarding the Notice of Privacy Practices should be advised to put their inquiry in writing to the Privacy Officer.

16.2.4 The Notice of Privacy Practices may be amended by the Fire Department from time to time, without notice to the patient. Such changes may take effect immediately and apply to all Fire Department patient health information.

16.3 Use and Disclosure of Patient Health Information Without Patient Authorization

16.3.1 The Notice of Privacy Practices informs patients of the specific treatment, billing and health care operations purposes for which patient health information may be used and disclosed without patient consent. These include:

- For the Fire Department's use in treating you or in obtaining payment for services provided to the patient or in other health care operations;
- For the treatment activities of another health care provider, involved in the patient's treatment;
- To another health care provider or entity for the payment activities of the provider or entity that receives the information (such as the hospital to which the patient is transported or the patient's insurer);
- To another health care provider or entity (such as the hospital to which the patient is transported) for their health care operations provided that the patient has had a relationship with that provider or entity and the patient health information pertains to that relationship;
- For quality assurance and quality improvement activities, in order to monitor and improve patient care, consistent with New York State law;
- For health care fraud and abuse detection or activities related to compliance with the law;
- To a family member, other relative or close personal friend or other individual involved in the patient's care, if we obtain the patient's permission or the patient does not object, or if we infer from the circumstances that the patient would not object to such disclosure (for example, sharing information with the patient's spouse after the spouse calls 911 for emergency medical assistance);
- To a public health authority in certain situations, such as reporting a birth, death or disease as required by law, as part of a public health investigation, to report abuse, neglect or domestic violence, product defects, or as part of a process to notify an individual about exposure to a communicable disease as required by law;
- For health oversight activities including audits or government investigations, inspections, disciplinary proceedings, and other administrative or judicial actions by the government or their contractors by law to oversee the healthcare system;
- For judicial and administrative proceedings as required by a court or administrative order, in response to a subpoena or other legal process, or to attorneys representing the Fire Department in connection with such matters;
- For law enforcement activities in situations such as when the information is needed to locate a suspect or stop a crime;

- For military, national defense and security and other special government functions;
- To avert a serious threat to the health and safety of the public at large;
- To prison officials or law enforcement officers for patients who have been detained by a law enforcement officer or who are inmates of a correctional facility;
- To coroners, medical examiners, and funeral directors for identifying a deceased person, determining cause of death, or carrying out their duties as authorized by law;
- For organ donors to organizations that handle organ procurement, organ, eye or tissue transplantation, or to an organ donation bank, as necessary to facilitate organ donation and transplantation;
- For research projects, where there is minimal risk to patient privacy and adequate safeguards are in place in accordance with the law; and
- Where the patient health information does not personally identify the patient.

16.4 Use and Disclosure of Patient Health Information With Patient Authorization

16.4.1 The Notice of Privacy Practices informs patients that use and disclosure of Fire Department patient health information for any purpose not set forth in the notice may require written patient authorization.

16.5 Right to Access, Copy and Inspect Patient Health Information

16.5.1 The Notice of Privacy Practices informs patients that they have certain rights to access, copy and inspect their patient health information. Except where disclosure is authorized by the Chief or Assistant Chief of EMS Operations or the Assistant Commissioner for Emergency Medicine in connection with the duties of their respective offices, all such requests to access, copy or inspect patient health information shall be made or promptly forwarded to the Bureau of Legal Affairs for processing. Fire Department personnel are NOT authorized to disclose ACRs or other patient record health information directly to the patient.

16.5.2 A patient may obtain a copy of the ACR relating to his or her EMS treatment and transport from the Public Records Unit of the Bureau of Legal Affairs, at Fire Department Headquarters. The request must be made in writing and accompanied by a notarized authorization for the release of the information signed by the patient (or in some cases, the patient's legal guardian), and a stamped self-addressed envelope. There is a charge for each ACR to be paid by check payable to the "New York City Fire Department." Copies may also be obtained by presenting the notarized authorization in person at the Public Records Unit, and cash payment may be made at the cashier's window.

16.5.3 ACRs may also be obtained by subpoena in accordance with the New York State Civil Practice Law and Rules (CPLR) and the Federal Rules of Civil Procedure. All subpoenas for Fire Department records shall be addressed or immediately forwarded to the Bureau of Legal Affairs at Fire Department Headquarters for processing. Except as may be authorized by federal law, all subpoenas for Fire Department records must be “so ordered” by a judge. The so-ordered subpoena, together with the applicable subpoena fee, may be served on the Fire Department by delivery to Fire Department Headquarters at 9 Metrotech Center, or by mail, in accordance with CPLR requirements, to the FDNY Bureau of Legal Affairs at Fire Department Headquarters.

16.6 Right to Request Amendment of Patient Health Information

16.6.1 The Notice of Privacy Practices informs patients that they have the right to request amendment of their patient health information if they believe the information is incorrect. All such requests shall be made in writing, state the reason for the requested amendment, and be made or promptly forwarded to the Fire Department’s Privacy Officer for processing. The Privacy Officer, in consultation with EMS Operations, Office of Medical Affairs and Legal Affairs, will determine whether the patient health information is incorrect and should be amended. Fire Department personnel may NOT amend ACRs or other records containing patient health information at the request of a patient except as authorized by the Privacy Officer in accordance with this policy and procedure.

16.6.2 Given the electronic nature of most of the Fire Department patient health information, amendments generally will be made by referencing the patient’s written request and the Privacy Officer’s determination of that request, and including such records in any future disclosures of the patient health information.

16.6.3 The Privacy Officer will notify the patient in writing whether the request has been granted or denied, and if denied, the reason for the denial. The patient then has the right to submit a statement of disagreement and to request that the patient’s original request, the Fire Department’s denial and the patient’s statement of disagreement be included in any future disclosures of the patient health information.

16.7 Right to Request Accounting of Use and Disclosure of Patient Health Information

16.7.1 The Notice of Privacy Practices informs patients that they have the right to receive a list of instances in which the Fire Department (directly or through its “business associates”) disclosed ACRs or other patient health information (to someone other than the patient) for a period of up to six years prior to the date of the patient’s request.

16.7.2 This right to an accounting does NOT include use or disclosure for treatment, payment, health care operations, disclosures pursuant to a patient authorization, disclosures to business associates of the Fire Department (such as the company that scans the ACRs), or disclosures that occurred prior to April 14, 2003 (the effective date of the HIPAA privacy regulations).

16.7.3 All patient requests for an accounting of the use and disclosure of their health information shall be made in writing, specify the time period for which the accounting is requested, and be made or promptly forwarded to the Bureau of Legal Affairs at Fire Department Headquarters for processing.

16.8 Right to Request Restrictions on the Use and Disclosure of Patient Health Information

16.8.1 The Notice of Privacy Practices informs patients that they have the right to request that the Fire Department restrict the use and disclosure of patient health information in connection with treatment, payment and health care operations, or to restrict the disclosure of such information to persons (such as family or friends) involved in the patient's health care or payment for the patient's health care. The Fire Department is obligated to consider such requests, but is not obligated to grant such requests.

16.8.2 All such requests must be made in writing, must state the restriction requested, and be made or promptly forwarded to the Fire Department's Privacy Officer for processing. The Privacy Officer, in consultation with EMS Operations, Office of Medical Affairs and Legal Affairs, will determine whether the Department will grant the requested restriction on the use and disclosure of patient health information. Fire Department personnel may NOT restrict use and disclosure of ACRs or other patient record health information at the request of a patient except as authorized by the Privacy Officer in accordance with this policy and procedure.

16.8.3 The Notice of Privacy Practices informs each patient that s/he has the right to file a complaint with the Fire Department or the United States Department of Health and Human Services if a patient believes that that the Fire Department has violated his or her privacy rights.

16.8.4 Patients wishing to file such a complaint with the Fire Department should be advised to put their complaint in writing to the Privacy Officer, as follows:

Privacy Officer
Compliance Unit
New York City Fire Department
9 MetroTech Center, 8th Floor
Brooklyn, NY 11201-3857
(718) 999-2033

16.8.5 Complaints may also be called in to the FDNY Complaint Hotline at (718) 999-2646.

16.8.6 In addition, Fire Department personnel who become aware of a patient complaint shall make written notification of such complaint or violation to the Privacy Officer or report such complaint to the FDNY Complaint Hotline.

16.8.7 The Fire Department does not authorize or condone any retaliation against a patient for filing a complaint alleging violation of their privacy rights, and will not tolerate any such misconduct by its personnel.

17. PERSONNEL INQUIRIES

17.1 Fire Department personnel with questions about the meaning, interpretation or application of the provisions of this policy and procedure shall submit their questions in writing to the Bureau of Legal Affairs, with a copy to the Privacy Officer, or call Legal Affairs at (718) 999-2040.

18. ENFORCEMENT

18.1 All Fire Department personnel are required to comply with the provisions of this policy and procedure. All Fire Department personnel with supervisory responsibility shall ensure that their subordinates comply with the provisions of this policy and procedure.

18.2 Fire Department personnel who become aware of a violation of this policy and procedure shall make written notification of such complaint or violation to the Privacy Officer or report such complaint to the FDNY Complaint Hotline.

18.3 A violation of this policy and procedure, or retaliation against a patient for making a complaint alleging violation of their privacy rights, may result in disciplinary action, in addition to the penalties provided in the HIPAA privacy regulations for unauthorized use and disclosure of patient health information.

18.4 Fire Department personnel are advised that the HIPAA privacy regulations provide for civil and criminal penalties for knowing disclosure of patient information in violation of such regulations, especially when such disclosures are made for reasons of personal gain or malicious harm.

BY ORDER OF THE FIRE COMMISSIONER AND CHIEF OF DEPARTMENT

ATTACHMENT A

SCHEDULE OF CONTRACT REQUIREMENTS

SCHEDULE A

	REFERENCE	ITEM	REQUIREMENTS
PART I	General Information for Bidders	Bid Security	Not Required
ARTICLE 4	Agreement	Term of Contract	Five (5) Consecutive Years
ARTICLE 7	Agreement	Insurance	Required Amounts
	(a) Worker's Compensation Employer's Liability per accident		Statutory \$1,000,000.00
	(b) Comprehensive General Liability Broad form combined single limit per accident for bodily Injury, personal injury, and property damage		\$2,000,000.00
	(c) Automobile		\$1,000,000.00
	(d) Errors and Omissions Insurance		See Page 10-9, Section IX
<p>ALL INSURANCE FORMS SHALL NAME THE NYC FIRE DEPARTMENT AS THE CERTIFICATE HOLDER AND THE CITY OF NEW YORK AS AN ADDITIONAL INSURED. Please use the description box in the insurance form when naming the City of New York as an additional insured. See attached sample form.</p>			
ARTICLE 7.4	Agreement	Liquidated Damages	See page 10-10, Section X (Liquidated Damages)
ARTICLE 7.5	Agreement Performance Bonds/ Payment Bond:		Deposited as Guarantee [] Applicable [X] Not Applicable
ARTICLE 11.7	Agreement	Sub-contracting	0 %

SECTION D - BID INFORMATION

1. Bid Submission Check List

- a) Bid Form and Affidavits - BID SUBMISSION (PRICE)

2. Definitions

- a. The definitions set forth in Chapter 1 of the Procurement Policy Board Rules shall apply to this Invitation For Bids.
- b. 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 the contract and the Invitation For Bids.

3. Invitation For Bids Documents

- a. Except for titles, sub-titles, 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 the contract and the Invitation For Bids.
 - 1. The Advertisement and Proposal for Bids.
 - 2. The Bid.
 - 3. The Agreement.
 - 4. The Budget Director's Certificate
 - 5. The Specifications.
 - 6. The Contract Drawings.
 - 7. All addenda issued by the Agency Chief Contracting Officer (ACCO) 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. Performance and Payment Bonds.
 - 11. Notice to Proceed with Work.
- b. For particulars as to this procurement, including quantity and quality of the purchase, extent of the work or labor to be performed, delivery and performance schedule, and any other special instructions, prospective bidders are referred to the Invitation For Bids documents. A copy of such documents can be obtained at the following location: New York City Fire Department, 9 MetroTech Center, Brooklyn, NY 11201, Attn: Contract Development Unit, Room 5S-01-K.
- c. Additional Copies - Additional copies of the Invitation For Bids documents may be obtained, subject to the conditions set forth in the advertisement for bids.

4. Examination of Proposed Contract

- a. Request for Interpretation or Correction - Prospective bidders must examine the Contract Documents carefully and before bidding must request the ACCO in writing for an interpretation or correction of every patent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder. Such interpretation or correction, as well as any additional contract provisions the ACCO may decide to include, will be issued in writing by the ACCO as an addendum to the contract, which will be sent by mail or delivered to each person recorded as having received a copy of the contract documents from the Contract Clerk, and which also shall be posted at the place where the contract documents are available for the inspection of prospective bidders.

Upon such mailing or delivery and posting, such addendum shall become a part of the contract documents, and binding on all bidders, whether or not actual notice of such addendum is shown.

- b. Only the Commissioner's or Agency Chief Contracting Officer's Interpretation or Correction Binding - Only the written interpretation or correction by the Fire Commissioner, ACCO or their duly authorized representative shall be binding as to any interpretation or corrections of the terms and conditions of this contract.

5. Form of Bid

- a. Each bid must be submitted in the prescribed form and must contain: a) the name, residence and place of business of the person or persons making the same; b) the names of all persons interested therein, and if no other person is so interested, such fact must be distinctly stated; c) a statement to the effect that it is made without any connection with any other person making a bid for the same purpose and that it is in all respects fair and without collusion or fraud; d) a statement that no Councilman or other officer or employee or person whose salary is payable in whole or part from the City Treasury is directly or indirectly interested therein or in the supplies, materials or equipment and work or labor to which it relates, or in any portion of the profits thereof; e) a statement that the bidder is not in arrears to the City or to any agency upon a debt or contract or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City to any agency thereof, except as set forth in the bid.
- b. The Bid shall be typewritten or written legibly in ink. The Bid shall be signed in ink. Erasures or alterations shall be initialed by the signer in ink.

6. Bidder's Oath

- a. The bid shall be properly signed by an authorized representative of the bidder and the bid shall be verified by the written oath of the authorized representative who signed the bid, that the several matters stated and information furnished therein are in all aspects true.
- b. A materially false statement willfully or fraudulently made in connection with the bid or any of the forms completed and submitted with the bid may result in the

termination of any contract between the City and the Bidder. As a result, the Bidder may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.

7. Site Visit

Where the Invitation For Bids involves performance of services on City facilities, all bidders are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost or performance of the Contract. In no event will a failure to inspect a site constitute grounds for withdrawal of a bid after opening or for a claim after award of the Contract.

8. Bids Shall Be Typewritten or Written Legibly in Ink

The Bid shall be typewritten or written legibly in ink. The Bid shall be signed in ink. Erasures or alterations shall be initiated by the signer in ink.

9. Irrevocability of Bid

The prices set forth in the bid cannot be revoked and shall be effective until the award of the contract, unless the bid is withdrawn as provided for in Sections 14, below.

10. Acknowledgment of Amendments

The receipt of any amendment to the contract documents shall be acknowledged by the bidder.

11. Bid Samples and Descriptive Literature

Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested elsewhere in the contract or contract documents. Any unsolicited bid samples or descriptive literature which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of this contract.

12. Proprietary Information/Trade Secrets

The bidder shall identify those portions of its bid that it deems to be confidential, proprietary information or trade secrets, and provide justification why such materials shall not be disclosed by the City. All materials the bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word "Confidential". Such materials stamped "Confidential" must be easily separable from the non-confidential sections of the bid.

All such materials so indicated shall be reviewed by the Agency and any decision not to honor a request for confidentiality shall be made in accordance with the NYS

Freedom of Information Law (FOIL). Prices, makes and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the bidder.

13. Bid Evaluation and Award

In accordance with the New York City Charter, the Procurement Policy Board Rules and the terms and conditions of this Invitation For Bids, this contract shall be awarded, if at all, to the responsive and responsible bidder, whose bid meets the requirements and evaluation criteria set forth in the Invitation For Bids, and whose bid price is either the most favorable bid price or, if the Invitation For Bids so states, the most favorable evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation For Bids.

14. Late Bids, Late Withdrawals and Late Modifications

Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered.

The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received.

15. Withdrawal of Bids

Except as provided for in Section 14, above, a bidder may not withdraw its bid before the expiration of forty-five (45) days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award.

If within sixty (60) days after the execution of the contract, the ACCO fails to fix the date for commencement of work by written notice to the bidder, the bidder, at his option, may ask to be relieved of his obligation to perform the work called for by written notice to the ACCO. If such notice is given the bidder waives all claims in connection with this contract.

16. Mistake in Bids

a. Mistake Discovered Before Bid Opening

A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.

b. Mistakes Discovered Before Award

1. In accordance with the Procurement Policy Board Rules, if a bidder alleges a mistake in bid after bid opening and before award, the bid may be corrected

or withdrawn upon written approval of the Agency Chief Contracting Officer and Agency Counsel if the following conditions are met:

- i) **Minor Informalities.** Minor informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City.
- ii) **Mistakes Where Intended Correct bid is Evident.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
- iii) **Mistakes Where Intended Correct Bid for Goods or Services is Not Evident.** A bidder for goods or services may be permitted to withdraw a low bid if:
 - a) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - b) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
- iv) **Mistakes Where Intended Correct Bid [for Construction] is Not Evident.** Mistakes may not be corrected after bid opening. A bidder [for construction,] may be permitted to withdraw a low bid where a unilateral error or mistake has been discovered in the bid and the Contracting Officer makes the following determination, which shall be approved by the ACCO:
 - a) the mistake was known or made known to the agency prior to [the awarding of the contract] supplier selection or within three days after the opening of the bid, whichever period is shorter;
 - b) the price bid was based on an error of such magnitude that enforcement would be unconscionable;
 - c) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;
 - d) the error in bid is actually due to an unintentional and substantial arithmetic error or unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn, and
 - e) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.

Upon the approval of the ACCO, the bid may be withdrawn, and the bid bond or other security returned to the bidder. The contract shall either be awarded to the next lowest bidder or resolicited pursuant to these Rules. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

Upon the approval of the ACCO, the bid may be withdrawn, and the bid bond or other security returned to the bidder. The contract shall either be awarded to the next lowest bidder or resolicited pursuant to these Rules. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

c. Mistakes Discovered After Award

Mistakes shall not be corrected after award of the contract except where the City Chief Procurement Officer subject to the approval of Corporation Counsel makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

17. Low Tie Bids

a. When two or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation For Bids, the Agency Chief Contracting Officer will break the tie in the following manner and order of priority:

- (i)** Award to a certified New York City small minority or woman-owned business entity bidder;
- (ii)** Award to a New York City bidder;
- (iii)** Award to a certified New York State small, minority or woman-owned business bidder; and
- (iv)** Award to a New York State bidder.

b. If two or more bidders still remain equally eligible after application of paragraph (a) above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

18. Rejection of Bids

a. Rejection of Individual Bids. The Agency Head may reject a bid if:

- (1)** The bidder fails to furnish any of the information required pursuant to this solicitation; or if
- (2)** The bidder is determined to be not responsible pursuant to the Procurement Policy Board Rules; or if
- (3)** The bid is determined to be non-responsive pursuant to the Procurement Policy Board Rules.

- b. **Rejection of All Bids.** The Agency, upon written approval by the Agency Chief Contracting Officer, may reject all bids and may elect to resolicit bids in accordance with the Procurement Policy Board Rules or by other method authorized by such rules.

19. **Right to Appeal Determinations of Non-Responsiveness or Non-Responsibility and Right to Protest Solicitations and Award.**

The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award, pursuant to Sections 2-07, and 2-08 of the Procurement Policy Board Rules.

20. **Affirmative Action and Equal Employment Opportunity**

This Invitation For Bids is subject to applicable provisions of Federal, State, and Local Laws and executive orders requiring affirmative action and equal employment opportunity.

20a. **Minority- or Woman-Owned Business and/or Locally-based Enterprise**

Bidders may obtain information concerning the availability of qualified and experienced Certified Minority- or Woman-Owned Business and/or Locally-Based Enterprise that can supply products or services for your organization needs by consulting the New York City Department of Small Business (SBS) Online Directory of Certified Business at www.newyorkbiz.com/mwbe. Applications to be a Certified Minority- or Woman-Owned Business and/or Locally-Based Enterprise may be obtained at the following SBS website www.nyc.gov/sbs.

21. **VENDEX Questionnaire**

Pursuant to Administrative Code 6-116.2 and Section 2-08(e) of the Rules of the Procurement Policy Board, bidders may be obligated to submit completed VENDEX questionnaires. Generally, if this bid is \$100,000 or more, or if this bid when added to the sum total of all contracts, concessions and franchises the bidder has received from the City and any Subcontract received from City Contractors over the past twelve months, equals or exceeds \$100,000 VENDEX Questionnaires must be completed. Any questions concerning this requirement must be submitted to the Agency Chief Contracting Officer or the contact person for this contract. VENDEX Questionnaires are subject to the review by the Department of Investigation.

22. **Audit by Comptroller**

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, One Centre Street, Room 835, New York, New York; telephone number (212) 669-7883.

23. Bid Security

- a. Bid Bond. If required in the Schedule of Bonds and Liability Insurance in this Invitation For Bids, no bid will be received or considered which is not accompanied by a Bid Bond (in the form set forth herein) issued by a surety company which is authorized to do business in the State of New York.
- b. The Bid Bond shall insure the City of New York to the extent of not less than 10% of the amount of the Bid Contract Price.
- c. In lieu of a Bid Bond, the bid may be accompanied by a deposit in approximately the sum of 2% of the amount of the Bid Contract Price. Such deposit shall consist of a certified check upon a state or national bank or trust company or a check of such bank or trust company signed by a duly authorized officer thereof, drawn to the City which the Comptroller shall approve as of equal value with the sum so required.
- d. The bid deposit, in whatever form, must not be enclosed in the envelope containing the bid, but must be submitted separately to the ACCO's representative upon presentation of the bid.
- e. The Bid Bond, or check, or cash as the case may be, shall assure the City of New York, and the Agency of the adherence of the bidder to its bid and the execution of the contract, in form as annexed hereto, if its bid is accepted.

24. Performance Bond

If required in the Schedule of Bonds and Liability Insurance in this Invitation For Bids, the successful bidder shall, prior to or at the time of the execution of the contract deliver to the City an executed bond in a form prescribed herein, and having as surety thereunder, such surety company or companies as are approved by the Comptroller, in the amount set forth in said Schedule of Bonds and Liability Insurance to secure the faithful performance and the completion of the contract.

25. Payment Bond

If required in the Schedule of Bonds and Liability Insurance in this Invitation For Bids, the successful bidder shall, prior to or at the time of execution of the contract deliver to the City an executed bond in form prescribed herein, and having as surety thereunder, such surety company or companies as are approved by the Comptroller in the amount set forth in said Schedule of Bonds and Liability Insurance, as security for the payment for all persons performing Labor or furnishing materials in connection with the contract.

26. Deposits

- a. In lieu of a performance or payment bond, the successful bidder may deposit with the Comptroller money or an obligation of the City of New York which the Comptroller shall approve as of equal value with the amount of the bond or bonds required in the Schedule of Bonds and Liability Insurance.

- b. Whenever the successful bidder deposits obligations of the City of New York in lieu of a performance or payment bond, the Comptroller may sell and use the proceeds thereof, for any purpose for which the principal or surety on such bond would be liable under the terms of the contract. If money is deposited with the Comptroller, the successful bidder shall not be entitled to receive interest on such money from the City.

Note: Deposits in Lieu of Bonds

In lieu of a payment or performance bond, a bidder may deposit (a) cash in the form of a bank check or certified check payable to New York City Fire Department in the amount of 100 percent of the bid price or (b) a letter of credit in the amount of 100 percent of the contract bid price.

Payment and Performance Bonds

Performance and Payment bonds are required only for construction contracts that are greater than \$250,000.00. Each bond shall be for 100% of the contract bid price.

27. Failure to Execute Contract

In the event of failure of the successful bidder to execute the contract and furnish any required security and insurance, within ten (10) days after notice of the award of the contract, the deposit of the successful bidder or so much thereof as shall be applicable to the amount of the award made shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay on demand the difference between the price bid and the price for which such contract shall be subsequently relet, including the cost of such reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action in an accepted bid.

28. Power of Attorney

Attorneys in fact who sign performance or payment bonds must file with each bond a certified copy of their power of attorney to sign said bond or bonds.

29. Financial Qualifications

- a. The Agency may require any bidder or prospective bidder to furnish all books of account, records, vouchers, statements or other information concerning the bidder's financial status for examination as may be required by the Agency to ascertain bidder's responsibility and capability to perform the contract.
- b. If the bidder fails or refuses to supply any of the documents or information set forth in paragraph (a) hereof or fails to comply with any of the requirements thereof, the Agency may reject the bid.

30. Bureau of Office Labor Services Information

a. Who Must File a Complete Employment Report - In accordance with Executive Order No. 50 (1980) and its implementing Regulations (E.O. 50), the filing of a completed Employment Report (ER) is a requirement of doing business with the City of New York if you meet all of the following conditions:

1. you have been identified as the lowest bidder for a supply or service contract or your proposal for supplies or services has been accepted;
2. your firm employs 50 or more people, and please note that
3. suppliers, sub-contractors or vendors performing on the contract who meet conditions 2 and 3, also must file an ER.

If you are the low bidder, an ER will be sent to you under separate cover.

b. Who Must File A Less Than 50 Employees Certificate

1. If you company or any of its facilities performing on the contract has fewer than 50 employees, although the contract value exceeds \$50,000, you need only submit a "Less Than 50 Employees Certificate".
2. If there is a sub-contractor, supplier or vendor to the prime Contractor and any of its facilities performing on the contract has fewer than 50 employees, although the sub-contract value exceeds \$50,000, the subcontractor shall submit the "Less Than 50 Employees Certificate".

31. Procurement Policy Board Rules

This Invitation for Bids is subject to the Rules of the Procurement Policy Board of the City of New York. In the event of a conflict between said Rules and a provision of this Invitation For Bids, the Rules shall take precedence.

PART II AGREEMENT

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 in 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 in 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 Part I Section B of the Proposal for Bid.

ARTICLE 4. PERIOD OF PERFORMANCE

The period of performance of this contract shall be as shown in Schedule A, commencing 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 Schedule "A" requirements (pg. 11).

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 GS-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.

The Contractor, at its option, may carry, in lieu of liability insurance provided above, commercial general liability insurance with a limit per accident equal to the amount required in Schedule "A" provided that attorneys fees, costs and disbursements are not included as part of such limits.

- 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 insurance carriers must:

- i.)* be licensed in the State where the Project is located and
- ii.)* 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 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 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. A provision in the insurance policy 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. LIQUIDATED DAMAGES

If provided for in Schedule A 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 Schedule A, 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.

5. 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.
Prevailing Wage Rates are available at

<http://www.comptroller.nyc.gov/>

[X] 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 therefrom 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, not 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 not 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 of 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, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- 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 or 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. Except as provided in 1(a) and 1(b) below, all disputes between the City and the vendor that arise under, or by virtue of, this contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board ("PPB Rules"). This procedure shall be the exclusive means of resolving any such disputes.
 - (a) This section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.
 - (b) For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the vendor's work to the contract, and the acceptability and quality of the vendor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the vendor disagrees.
2. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.
3. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the vendor shall continue to perform work in accordance with the

contract and as directed by the Agency Chief Contracting Officer (“ACCO”) or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of any and all claims being presented pursuant to this section and a material breach of contract.

4. Presentation of Dispute to Agency Head.

(a) Notice of Dispute and Agency Response. The vendor shall present its dispute in writing (“Notice of Dispute”) to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the vendor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the vendor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the vendor to produce any requested material whose relevancy the vendor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the vendor of its claim.

(b) Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the vendor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head’s ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other vendor with a contract

related to the work of this contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the vendor initiating the dispute.

- (c) Agency Head Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the vendor and ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.
 - (d) Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the vendor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the vendor and more favorable to the City than the decision of the Agency Head.
5. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the vendor to the CDRB, the vendor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
- (a) Time, Form, and Content of Notice. Within thirty (30) days of receipt of a decision by the Agency Head, the vendor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the vendor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head, and (iii) a copy of all materials submitted by the vendor to the agency, including the Notice of Dispute. The vendor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
 - (b) Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
 - (c) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may

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

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

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

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

7. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the vendor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.
- (a) Form and Content of Petition by Vendor. The vendor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the vendor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the vendor to the agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the vendor to, the Comptroller's Office. The vendor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the vendor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.
 - (b) Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the vendor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency response shall be submitted to the CDRB at OATH's offices and one to the vendor. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.
 - (c) Further Proceedings. The Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the vendor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the agency's case. Neither the vendor nor the agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
 - (d) CDRB Determination. Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a

decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

(e) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the vendor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.

(f) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with Section 4-09 of the PPB Rules.

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

ARTICLE 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

1.
 - 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 judgement 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 therefor 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 March 2004. 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.

AGREEMENT

This agreement made and entered into as of the _____ day of _____
20 _____, by and between the Fire Department Agency Chief Contracting Officer on
behalf of the City of New York ("Fire Department Chief Contracting Officer") and _____
_____ ("Contractor") having offices located at _____
_____.

This Agreement consists of the Advertisement and proposal for Bids, the Information for Bidders, The Agreement, Appendix "A", the Specifications, the Bid Documents, all addenda issued by the Commissioner prior to the receipt of Bids, the Notice of Award, the Notice to Proceed with the work, and all provisions required by law to be inserted into this Agreement, whether actually inserted or not.

Each party has full power and authority to enter into and perform this Agreement, and the persons authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read the Agreement, understands it, and agrees to be bound by it.

The Fire Department Agency Chief Contracting Officer on behalf of the City of New York, and the Contractor have executed this Agreement in triplicate, one part of which is to remain with the Fire Department Agency Chief Contracting Officer, one other to be filed with the Comptroller of the City, and the third to be delivered to the Contractor.

THE CITY OF NEW YORK

By _____
Fire Dept. Agency Chief Contracting Officer

(Name of Contractor)

By _____
(Member of Firm or Officer of Corporation)

(Where Contractor is a Corporation, add)

Attest: _____
Secretary

(Seal)

AGREEMENT

Acknowledgement by Agency Chief Contracting Officer

State of New York
County of Kings, ss:

On this _____ day of _____, 20____ before _____ me personally came ROBERT L. SCOTT to me known and known to me to be the Agency Chief Contracting Officer of the Fire Department of the City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Agency Chief Contracting Officer for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

AGREEMENT

Acknowledgement by Corporation

State of _____

City of _____, ss:

On this _____ day of _____, 20____ before _____ me personally came _____ who being by me duly sworn, did depose and say that s/he resides in the City of _____; that s/he is the _____ of the _____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his/her name thereto by like order.

Notary public or Commissioner of Deeds

Acknowledgement by Individual

State of _____

City of _____, ss:

On this _____ day of _____, 20____ before me personally came _____ to me know and known to me to be the same person described and who executed the foregoing instrument and he acknowledged to me that he executed the same for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

Acknowledgements by Partnership

State of _____

City of _____, ss:

On this _____ day of _____, 20____ before me personally came _____ to me known and known to me to be a member of _____ for firm described in and which executed the foregoing instrument and he acknowledged to me that s/he subscribed the name of said firm thereto on behalf of said firm for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

AGREEMENT

AUTHORITY

BUDGET DIRECTORS CERTIFICATE NO.....DATED

APPROPRIATION

COMMISSIONER'S CERTIFICATE

In conformity with the provisions of Section 93-C-3.0 of the Administrative Code of the City of New York, it is hereby certified that the estimated cost of the work, materials, and supplies required by the within contract, amounting to _____

_____ dollars (\$ _____) is chargeable to the fund of the Department of Fire, entitled.

Code, _____

I hereby certify that the specifications contained herein comply with the terms and conditions of the...**BUDGET.**

Agency Chief Contracting Officer

COMPTROLLER'S CERTIFICATE

The City of New York, _____, 20_____

In pursuance of the provisions of section 93-C-3.0 of the Administrative Code of the City of New York, I hereby certify that there remains unapplied and unexpended a balance of the above mentioned fund applicable to this contract sufficient to pay the estimated expense of executing the same.

viz: \$ _____

Comptroller

PART III - BID SUBMISSION DOCUMENTS

PART III - BID SUBMISSION DOCUMENTS
BID PRICE SUBMISSION

SECTION I

NOTE TO BIDDERS: FAILURE TO COMPLETE THIS SECTION IN DETAIL WILL RESULT IN REJECTION OF YOUR BID.

1. **THE UNDERSIGNED** agrees, if this bid is accepted, that it will, within 10 days after receipt of notice of award, furnish such Employment Questionnaire, and certificates of insurance as may be required, execute the Agreement set forth in this Competitive Sealed Bid and will proceed, when directed to do so, with the work required hereunder in strict compliance with the terms and conditions set forth in this Competitive Sealed Bid **AT THE FOLLOWING BID PRICE:**

TOTAL BID PRICE: _____

(Amount in words) _____

_____ dollars AND

_____ cents.

NOTE: In case of discrepancy between the amount in figures and the amount in words the lesser amount will apply.

2. **THE UNDERSIGNED**, in submitting this bid, expressly states and represents as set forth in Section II of this Part;
3. **THE UNDERSIGNED** hereby certifies to the truth and accuracy of all figures and answers contained in the documentation submitted with the bid, and authorizes the Department to make any necessary examination of the books of account, records and vouchers of the bidder to determine its responsibility.
4. **THE UNDERSIGNED** hereby agrees that the Provisions, re: MacBride Principles, constitute material conditions of this contract.

Bidder (Print) _____

By _____
(Signature of Person Authorized to sign this Bid)

(Type name and title, if any)

attest:

(Corporation Seal)

(Secretary of Corporate Bidder)

**PRICE SCHEDULE FOR THE PROVISION OF
CONSULTANT PHYSICIAN SERVICES**

Year 1

Consultant Job Title	Estimated Annual Net Labor Cost Based on the Net Hourly Labor Rate In Effect at the Time of the Contractor Employee Assignment (A)	Contractor's Cost Factor (1+ % mark up) (B)	TOTAL PRICE ^{NOTE 1} (C) (Estimated annual labor Cost x Contractor's cost factor) (A) X (B) = (C)
Physician	\$465,000	_____	\$ _____
Total Cost Year 1			\$ _____

Year 2

Consultant Job Title	Estimated Annual Net Labor Cost Based on the Net Hourly Labor Rate In Effect at the Time of the Contractor Employee Assignment (A)	Contractor's Cost Factor (1+ % mark up) (B)	TOTAL PRICE ^{NOTE 1} (C) (Estimated annual labor Cost x Contractor's cost factor) (A) X (B) = (C)
Physician	\$465,000	_____	\$ _____
Total Cost Year 2			\$ _____

NOTE 1: The Contractor's Cost Factor, i.e. a 5% mark-up is a Cost Factor of 1.05 and a total price of \$1,500,000.00 x 1.05 = \$1,575,000.00. The above quantities for temporary labor services are estimates used for bid purposes. The Fire Department will not guarantee a minimum of labor services for the project.

**PRICE SCHEDULE FOR THE PROVISION OF
CONSULTANT PHYSICIAN SERVICES**

Year 3

Consultant Job Title	Estimated Annual Net Labor Cost Based on the Net Hourly Labor Rate In Effect at the Time of the Contractor Employee Assignment (A)	Contractor's Cost Factor (1+ % mark up) (B)	TOTAL PRICE ^{NOTE1} (C) (Estimated annual labor Cost x Contractor's cost factor) (A) X (B) = (C)
Physician	\$489,500	_____	\$ _____
Total Cost Year 3			\$ _____

Year 4

Consultant Job Title	Estimated Annual Net Labor Cost Based on the Net Hourly Labor Rate In Effect at the Time of the Contractor Employee Assignment (A)	Contractor's Cost Factor (1+ % mark up) (B)	TOTAL PRICE ^{NOTE1} (C) (Estimated annual labor Cost x Contractor's cost factor) (A) X (B) = (C)
Physician	\$502,000	_____	\$ _____
Total Cost Year 4			\$ _____

NOTE 1: The Contractor's Cost Factor, i.e. a 5% mark-up is a Cost Factor of 1.05 and a total price of \$1,500,000.00 x 1.05 = \$1,575,000.00. The above quantities for temporary labor services are estimates used for bid purposes. The Fire Department will not guarantee a minimum of labor services for the project.

**PRICE SCHEDULE FOR THE PROVISION OF
CONSULTANT PHYSICIAN SERVICES**

Year 5

Consultant Job Title	Estimated Annual Net Labor Cost Based on the Net Hourly Labor Rate In Effect at the Time of the Contractor Employee Assignment (A)	Contractor's Cost Factor (1+ % mark up) (B)	TOTAL PRICE ^{NOTE 1} (C) (Estimated annual labor Cost x Contractor's cost factor) (A) X (B) = (C)
Physician	\$502,000	_____	\$ _____
Total Cost Year 5			\$ _____

TOTAL Year 1 + Year 2 + Year 3 + Year 4 + Year 5 = \$ _____

NOTE 1: The Contractor's Cost Factor, i.e. a 5% mark-up is a Cost Factor of 1.05 and a total price of \$1,500,000.00 x 1.05 = \$1,575,000.00. The above quantities for temporary labor services are estimates used for bid purposes. The Fire Department will not guarantee a minimum of labor services for the project.

SUBMITTED BY:

NAME OF CONTRACTOR

PRINT NAME

SIGNATURE

TITLE

DATE

STATEMENTS AND REPRESENTATIONS OF BIDDER

BIDDER MAKES THE FOLLOWING STATEMENTS AND REPRESENTATIONS AS PART OF THIS BID:

1. That the bidder, if an individual, is of lawful age. That the bidder is the only one interested in this bid; and that no person, firm or organization other than herein above named has any interest in this bid, or in the contract proposed to be taken.
2. That the bidder and each person signing on behalf of any bidder certified, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:
 - A. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such process with any other bidder or with any competitor:
 - B. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to bid 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 bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition:
 - D. That no councilperson or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.
 - E. Said 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 or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except _____.

The bidder shall indicate on its bid its Tax Identification Number.

3. That the said bidder has inspected the site where the services are to be performed and is satisfied as to all general and local conditions that may affect the cost of performance of the contract.
4. That the bidder has examined all parts of this Proposal for Bid, including but not limited to the Agreement and the terms and conditions thereof; and if the bid is accepted as submitted, the bidder shall execute the Agreement as set forth herein.

5. That the bidder certifies that it is duly licensed to do business in the City and State of New York and holds or agrees to obtain all necessary permits required by law or regulation for the performance of the contract.
6. The bidder, executes this document expressly warranting and representing that should this bid be accepted by the City and the contract awarded to it, the bidder and its subcontractors engaged in the performance of the contract: (1) will comply with the provisions of Section 343-9.0 of the Administrative Code of the City of New York in relation to minimum wages and other stipulations and the rules and regulation of the Procurement Policy Board adopted pursuant thereto as more expressly and in detail set forth in the contract form.

In the event of breach or violation of any of the foregoing, the bidder may be subject to damages, liquidated or otherwise, cancellation of the contract and suspension as a bidder for a period of three (3) years.

7. The bidder, (1) represents that its attention has been specifically drawn to the Equal Employment Provisions of the Contract Agreement, and (2) warrants that it will comply with all the terms and provisions prescribed therein.
8. The bidder executes his document expressly warranting and representing that should this bid be accepted and the contract awarded to the bidder, the bidder and its subcontractors engaged in the performance (1) will comply with the provisions of Section 343-8.0 of the Administrative Code of the City of New York and the nondiscrimination provisions of Sections 220 and 239 of the New York Labor Law as more expressly and in detail set forth in the contract form: and (2) will post notices to be furnished by the City, setting forth the requirements of the aforesaid law in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of the contract can readily view it, and will continue to keep such notices posted until the supplies, materials and equipment, or work, labor and services required by the Contractor have been finally accepted by the City.

ACKNOWLEDGEMENT OF BIDDER - PRINCIPAL IF A CORPORATION

State of _____

ss:

County of _____

On this _____ day of _____ 20____ before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____

that he/she is the _____ of _____

the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal, that it was so affixed by order of the directors of the directors of said corporation, and that he signed his name thereto by like order.

Notary Public

ACKNOWLEDGEMENT OF BIDDER - PRINCIPAL IF A PARTNERSHIP

State _____

ss:

County _____

On this _____ day of _____ 20____ before me personally appeared _____ to me known and known to me to be one of the members of the firm of _____

described in and who executed the foregoing instrument and he/she acknowledged to me that the executed the same as and for the act and deed of said firm.

Notary Public

ACKNOWLEDGEMENT OF BIDDER - PRINCIPAL IF AN INDIVIDUAL

State of _____

ss:

County of _____

On this _____ day of _____ 20____ before me personally appeared _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

Notary Public

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.**

CONTRACTOR QUESTIONNAIRE

NOTE TO BIDDERS: This form shall be completed by all Bidders.

- 1. a) Name of Bidder _____
- b) Bidder is: Individual [] Partnership [] Corporation []
- 2. Address _____
- 3. Telephone Number: _____
- 4. Date business was formed _____
- 5. How long is the business at present address _____
- 6. If incorporated, state date of incorporation _____
State _____ (If not a domestic corporation, attach a copy of the Certificate of Authority by the Secretary of the State of New York pursuant to the General Corporation Law.)
- 7. List below names and addresses of principal officers of the Corporation.

NAME	ADDRESS	TITLE

- 8. If a partnership, list names and addresses of all partners:
- 9. If you are doing business under a trade name, give state and county in which certificate is filed.

_____ (State) _____ (County)

(If certificate is filed outside New York City, attach a certified copy of the certificate).

- 10. (a) Number of employees _____
- 11. Do you share the working premises with any other firm or firms? [] Yes [] No

If Yes, provide the name of the other firm or firms:

(Address)

(Years)

12. Do you own or operate a warehouse? Yes No If Yes, give address and
number of years at address: _____

(Address)

(Years)

13. Does this business have any outstanding bids for contracts with the City of New York?
 Yes No If Yes, please list bids and agencies:

14. Does this business have any current contract awards from the City? Yes No
If Yes, please list the awards including the amount of the award.

VENDEX GUIDE FOR BIDDERS VENDEX QUESTIONNAIRES

Forms and Instructions available at [NYC.gov/vendex](https://nyc.gov/vendex)

Vendor Questionnaire

Principal Questionnaire

Vendor's Guide to VENDEX

Certification of No Change

Submitted VENDEX Memo

Notice to Vendors

AMERICANS WITH DISABILITIES ACT

The following provisions to this agreement are

(X) 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 the individuals with disabilities, including but not limited to people with visual, audible, or mobile disabilities. Contractors shall submit the Compliance Plan to the ACCO of the Agency for review within 10 days after execution of this Agreement. Upon approval by the Agency of the Compliance Plan, Contractor shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs or activities accessible and usable by the Agency and the Contractor.

Contractor’s failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

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.

PART IV – SCHEDULE OF WAGE RATES AND SUPPLEMENTS

1. The omission of any pertinent wage rates from this list shall not be presumed as an indication that such type of labor will not be required on this project.
2. This schedule sets forth the wage rate and supplements required to be annexed to and to form part of the specifications in contracts for public works pursuant to Subdivision 3 of Section 220, (or pursuant to Section 231 if the work is for Building Services), of the Labor Law of the State of New York. It is noted, however; that only the rates and supplements applicable to those classifications of workmen, laborers and mechanics actually involved in particular contract shall be annexed to the contract as part of the specifications.
3. The attached schedule of wages and supplements are considered the prevailing wage rate and the Contractor engaged in public work is obligated to pay each employee not less than the wages specified in this schedule for his craft, trade or occupation.
4. All rates and supplements above are the basic rates and supplements and do not include overtime, shift differentials (if any), holidays, Saturday or Sunday rates or any other type of premium payments.
5. If contract is not awarded within 90 days of date of establishments of prevailing rates or wages, request must be made for a re-determination of a schedule of wages by the awarding agency.

PERIOD: _____ TO _____

ACKNOWLEDGMENT OF ADDENDA

PIN: XXXXXXXXXX _____

Project Description: _____

Instructions: The respondent is to complete Part I or Part II of this form, whichever is applicable, and sign and date this form. This form serves as the respondent's acknowledgment of the receipt of the Addenda to this solicitation which may have been issued by the FDNY prior to the Proposal Due Date and Time.

Part I: Check Box if Applicable:

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

Addendum # 1, dated: ___/___/___ Addendum # 2, dated: ___/___/___

Addendum # 3, dated: ___/___/___ Addendum # 4, dated: ___/___/___

Addendum # 5, dated: ___/___/___ Addendum # 6, dated: ___/___/___

Addendum # 7, dated: ___/___/___ Addendum # 8, dated: ___/___/___

Addendum # 9, dated: ___/___/___ Addendum # 10, dated: ___/___/___

Addendum # 11, dated: ___/___/___ Addendum # 12, dated: ___/___/___

Part II: Check Box if Applicable:

No addendum was received in connection with this solicitation.

Respondent's Company Name: _____

Respondent's Authorized Representative :

Name: _____

Signature: _____

Title: _____

Date: _____

PIN NO. 057060002901

**THE CITY OF NEW YORK
FIRE DEPARTMENT**

**CONTRACT AND SPECIFICATIONS
For Furnishing and Delivering as Required:**

TEMPORARY PHYSICIANS

**APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY**

ACTING CORPORATION COUNSEL

DATE:
