BID BOOK

CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
DIVISION OF MUNICIPAL SUPPLY SERVICES
MUNICIPAL BUILDING
1 CENTRE STREET, 18TH FLOOR
NEW YORK, NEW YORK 10007

INVITATION FOR BIDS

BID INFORMATION:

Please note that this procurement is being solicited through the Procurement and Sourcing Solutions Portal (PASSPort). All documents related to this solicitation will be available in PASSPort and all responses should be submitted via PASSPort and in accordance with directions provided by the Agency. Responses submitted through PASSPort will be signed electronically and will remain sealed until bid opening.

CONTRACT

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I. Bid Book (Sectioned into A, B, and C pages)

A Pages: Invitation for Bid, Offer, Vendor Signature and Notarization

B Pages: Contract Specific Terms and Conditions

C Pages: Specifications and Schedule of Quantities and Prices

II. New York City Purchase Contract
(310L/FEBRUARY/2015)

Part I General Definitions

Part II Standard Instructions to Bidders

Part III General Conditions

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Part V Affirmations

All applicable forms must be completed and submitted with the bid. Non-compliance with any of the bid submission requirements may result in the disqualification of the bid. For a bid to be considered responsive:

1. NO EXCEPTIONS MAY BE TAKEN TO THE NEW YORK CITY PURCHASE CONTRACT.

2. BIDS MUST BE SIGNED. ALL REQUIRED PRICING INFORMATION MUST BE INCLUDED IN THE C PAGES AND BE TYPED OR WRITTEN IN INK.

3. ALL REQUIRED SIGNATURES MUST BE IN INK.

4. ANY ALTERATION OF PRICE (INCLUDING CORRECTION FLUID/TAPE) MUST BE INITIALED IN INK.

OFFER AND ACCEPTANCE

1. FIRM OFFER

The Bidder proposes to furnish and deliver to the City the Goods required under this contract, to provide all labor and services and to perform all other work in connection therewith, all as specified by the terms and conditions of the Contract, based upon the unit prices or lump sum prices in the bid (C Pages).
A submitted bid constitutes an Offer to the City by Bidder to furnish and deliver the Goods or Services specified at the unit or lump sum prices 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in the bid cannot be revoked and shall be effective until the award of the Contract, unless the bid is modified or withdrawn by written notice received in the office designated to receive bids before the time and date set for bid opening, or, after the expiration of 45 days from bid opening, in advance of an actual award.

The City reserves the right to make awards within 45 days after the date of bid opening during which period the bid may not be withdrawn. If, however, an award is not made within the 45 day period, a bid shall remain in effect until a contract is awarded or the Bidder delivers to the City written notice of the withdrawal of its bid in advance of an actual award.

2. CITY'S ACCEPTANCE

The City shall accept the Offer by mailing to the Bidder at the address specified in the bid a PURCHASE ORDER or NOTICE OF AWARD, for any of the items for which this bid is submitted. An acceptance of the Offer shall constitute a Contract between the City of New York and the Bidder to furnish and deliver to the City the items set forth in the PURCHASE ORDER or NOTICE OF AWARD at the unit prices or lump sum price specified in the bid subject to the terms set forth in the Contract as if said form of Contract had been signed by the Agency Chief Contracting Officer and the Bidder.

3. SUBMISSION OF BID

The completed Bid must be submitted in a sealed envelope on or before the time and at the place indicated in the Invitation for Bids. 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 the Bid signature on A-1 must be an original signature and notarized. The Bid shall be typewritten or written legibly in ink. The Bid shall be signed in ink. Erasures or alterations, including correction fluid/tape, shall be initialed by the signer in ink. The Bid must be properly signed by an authorized representative of the bidder.

4. FALSE STATEMENT

A false statement willfully or fraudulently made in connection with the bid and/or any of the forms completed and submitted to the City in connection 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.

5. NEW YORK CITY PURCHASE CONTRACT

Bidder acknowledges receipt of and agrees to be bound by the terms and conditions of the New York City Purchase Contract referenced in the Table of Contents.

6. PROCUREMENT POLICY BOARD RULES

This contract is subject to the Rules of the Procurement Policy Board of the City of New York, as amended. In the event of a conflict between said Rules and a provision of this contract, the Rules shall take precedence. For information and updates on the Procurement Policy Board Rules, bidders are referred to www.nyc.gov/ppb, or the Mayor's Office of Contract Services at 212-788-0010.

7. BID PROCESS

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) 669-2323.

8. PROMPT PAYMENT

The Prompt Payment provisions set forth in Chapter 4, Section 4-06 of the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payment made by New York City agencies only under a contract resulting from this solicitation. 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(3), (4), (5) and (6) 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 an 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.

Pursuant to the Prompt Payment provisions of the Procurement Policy Board Rules, the Division may designate this contract and the items specified herein as subject to a longer acceptance period to afford a practicable opportunity for testing, installation and inspection. For purposes of vendor payment in such case, the actual date of acceptance by the Division's Bureau of Quality Assurance shall substitute for the Invoice Received/Acceptance Date (IRA Date).

9. ELECTRONIC FUNDS TRANSFER

In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

The EFT Vendor Payment Enrollment Form available for download at:
http://www1.nyc.gov/site/finance/about/doing-business-with-nyc-direct-deposit-program.page

WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

   (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation. (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

   (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

   (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

      (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
      (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

(d) For the purposes of this rider, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

(e) This rider is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of $100,000; accordingly, Contractor shall include this rider in all subcontracts with a value in excess of $100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at $100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of $100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act ("WPEA"), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

NOTICE TO BIDDERS

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip. In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Construction Contract and PPB Rule § 4-13 Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of $100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT

RELATING TO A NYC-FUNDED CONTRACT OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATION

212-825-5959

DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:

New York City Department of Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:
www.nyc.gov/doi

All communications are confidential

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than $100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.

- **To be protected by this law, an employee must report to DOI – or to certain other specified government officials –** information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than $100,000.

- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages

← Scan the QR Code at Left to File a Complaint

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. *Introduction and General Provisions.*

1. The Earned Safe and Sick Time Act ("ESSTA"), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the "Paid Safe and Sick Leave Law," requires covered employees (as defined in Admin. Code § 20-912) in New York City ("City") to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City's Department of Consumer and Worker Protection ("DCWP"), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq*. ("DCWP Rules").

2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP Rules, and as amended, if applicable, in the performance of this agreement. The Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the ESSTA in performance of this agreement may result in its termination.

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP's guidance and must comply with DCWP's subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City's administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.[1] Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

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[1] Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an

employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the safe and sick time was used.

C. *Exemptions and Exceptions*. Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed $50.00 for each employee who was not given appropriate notice.

F. *Records*. An employer must retain records documenting its compliance with the ESSTA for a period of at least three years, and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer .

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed $500.00 for a first violation, $750.00 for a second violation within two years of the first violation, and $1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Polices and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

New York City Mayoral Executive Order No. 39 Rider

City Fleet and Truck Safety Requirements for City Contractors

Version: 11/19/24

[Instruction to Agencies: Please attach this Rider to the following agreements: (1) Procurement Contracts that meet the criteria set forth in Executive Order 39 of February 1, 2024; and (2) to the March 2017 version of the New York City Standard Construction Contract.]

Section 1.01 Background

This rider is included in the Agreement and made a part thereof pursuant to the provisions of Mayoral Executive Order 39 of 2024.

Section 1.02 Definitions

A. Capitalized terms not otherwise defined in this rider shall have the meaning ascribed to them in the Agreement.

B. Agreement: The agreement between the City and the Contractor, to which this rider has been added and made a part.

C. City-contracted Vehicle means a Truck (as hereinafter defined) or any other motor vehicle that the Contractor anticipates providing in accordance with this Agreement or using in performing its obligations under this Agreement on a weekly or more frequent basis[1]. This includes those vehicles anticipated to be provided or used by subcontractors to fulfill the scope of a subcontract for work to be performed under a contract that is subject to the Executive Order, regardless of monetary value of the subcontract, if the vehicle is utilized on a weekly or more frequent basis.

D. Contracting Agency: the City agency or office through which the City of New York has entered into this Agreement.

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[1] The following vehicles are not considered City-contracted vehicles and are thus not subject to Executive Order 39: any motor vehicle or truck that is utilized pursuant to (1) contracts registered prior to July 1, 2024, including the renewal, extension, or modification of such contracts; (2) an agency on-call emergency contract; (3) an emergency procurement made pursuant to section 3-06 of title 9 of the Rules of the City of New York or pursuant to an executive order of the Mayor or Governor issued under section 24 or section 29-A of the New York State Executive Law; (4) intergovernmental contracts; (5) government-to-government contracts between the City and any State or Federal government agency; and (6) a contract for utilities, as identified in subdivision (b) of section 825 of the New York City Charter.

E. Contractor: the entity providing services under this Agreement.

F. Executive Order: Mayoral Executive Order 39 of 2024, as it may be amended.

G. High Vision Truck: A Truck with a cab-over or cab-forward design wherein the driver sits in front of the front axle as opposed to conventional cab design wherein the engine and front axle are in front of the driver. The distance from the forward of the center of the vehicle bumper at which the driver can see the top of a 3-foot cone shall not exceed eight feet and the distance beyond the exterior of the passenger side door at which the driver can first see the top of the 4-foot cone shall not exceed six feet.

H. Registration: Registration of this Agreement pursuant to Section 328 of the New York City Charter.

I. Telematics: Automatic vehicle location systems that track vehicle location and speed and alert the driver and another designated person(s) to such location and speed in real time.

J. Truck: A City-contracted Vehicle with a manufacturer's gross vehicle weight rating exceeding 10,000 pounds. The term does not include off-road construction vehicles.

K. Truck Surround Cameras: A system of cameras, sensors, and alerts placed on a Truck that provides a Truck operator with a full view of all four sides of the Truck.

L. Vehicle Safety Plan: A plan with regard to City-contracted Vehicles, approved by the Contracting Agency, that includes the components listed in Section 2.03(A) through (F) of this rider.

Section 2.01 Vehicle Requirements

All City-contracted Vehicles shall conform to the following requirements:

A. Truck Surround Cameras: All Trucks, other than High Vision Trucks, shall be outfitted with truck surround cameras in accordance with the following schedule:
  a. Contracts involving 10 or fewer Trucks: No later than 12 months from Registration.
  b. Contracts involving more than 10 Trucks: No later than 18 months from Registration.
  c. New or replacement Truck acquired after work under this Agreement has begun: Truck must be outfitted with Truck Surround Cameras within 12 months from the date of first using such Truck.
  d. Contractor must submit to the Contracting Agency photographic and purchase order evidence, that is satisfactory to the Contracting Agency, of compliance with this Paragraph (A).

B. Truck Side-guards: Contractor shall provide side-guards for City-contracted Vehicles as applicable pursuant to Section 6-141 of the New York City Administrative Code.

C. Telematics: All City-contracted Vehicles must be installed with Telematics. Data gathered by Telematics must be made available in a manner that is satisfactory to the Contracting Agency.

Section 2.02 Safety Requirements

Contractor shall provide the following:

A. Licensing: Contractors shall ensure proper licensing for all drivers who operate City-contracted Vehicles. Contractors shall ensure that all drivers operating City-contracted Vehicles are enrolled in the New York State License Notification System (LENS) and that all out-of-state licenses are being monitored by Contractor. Contractor must notify the Contracting Agency of any license suspensions and/or arrests tied to unsafe or illegal vehicle operation by any drivers of City-contracted Vehicles.

B. Training: Contractor must provide the Contracting Agency documentation, satisfactory to the Contracting Agency, showing:
   a. That all drivers of City-contracted Vehicles have taken a New York State approved defensive driving class within six months after Registration; or
   b. That all drivers of City-contracted Vehicles have attended a New York State-approved defensive driving class within 3 years prior to Registration; or
   c. That all drivers of City-contracted Vehicles have received alternative safe driver training acceptable to the Contracting Agency that is documented to the satisfaction of the Contracting agency.

C. Crash tracking: Contractors must notify the Contracting Agency of any and all collisions that take place involving City-contracted Vehicles while performing services under this Agreement.

Section 2.03 Vehicle Safety Plan

Within one month after Registration, the Contractor must submit, for review and approval, to Contracting Agency, at the address set forth in the Agreement for notices to the City, and DCAS Fleet (C/O Chief Fleet Management Officer, 23rd Floor South, Municipal Building, 1 Centre Street, NY, NY 10007) a proposed vehicle safety plan that shall include at the minimum the components listed in Paragraphs (A) through (E) below. If directed by the Contracting Agency, Contractor shall revise said proposed vehicle safety plan in accordance with the directions of the Contracting Agency, and until the Contracting Agency issues its approval thereof, Contractor shall submit a revised proposed vehicle safety plan to the Contracting Agency in each case, within 15 days after receipt by Contractor of directions to that effect from the Contracting Agency. Upon approval of the proposed vehicle safety plan, said proposed plan shall be considered the Vehicle Safety Plan and Contractor shall comply with the terms thereof. Each second anniversary of the approval of the Vehicle Safety Plan the Contractor shall submit an update thereof. The Vehicle Safety Plan shall include at the minimum the following components:

A. Vehicle List: List of City-contracted Vehicles, including the year, make, model, VIN and license plate number of each City-contracted Vehicle;

B. Safety Training: Documentation showing that all drivers of City-contracted Vehicles have completed the training detailed in section 2.02(B) of this Rider;

C. Technology: A list of all relevant technology investments installed on City-contracted vehicles, including but not limited to the technology listed in section 2.01 of this Rider;

D. Crash Tracking: An explanation of Contractor's process of monitoring and reviewing collisions including plans to notify Contracting Agency of collisions that take place while performing services under this Agreement;

E. Corrective Action: A corrective action program for drivers of City-contracted Vehicles that engage in unsafe or dangerous driving behaviors and license monitoring; and

F. Additional Safety Measures: Contractor must indicate if there are any additional safety technologies, safety practices, training, or other procedures that are utilized for City-contracted Vehicles during the term of this Agreement.

Section 3.01 Liquidated Damages

A. Contractor acknowledges that its failure to comply with the provisions of this Vehicle Safety Plan will cause loss and damage to the City, the precise extent of which is difficult to ascertain in monetary terms. For this reason, the parties desire to provide fair and reasonable compensation to the City for such losses, which compensation shall not be construed as a penalty. It is therefore agreed that, in addition to any other liquidated damages that the Contractor shall be required to pay to the City in accordance with the provisions of the Agreement, Contractor shall pay to the City the following:

    a. The sum of $500.00 for each instance of a failure by the Contractor to submit a Vehicle Safety Plan in accordance with the provisions of Section 2.03.

b. The sum of $500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.02(A) [Licensing].
c. The sum of $500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.02(B) [Training].
d. The sum of $500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.02(C) [Crash Tracking].
e. The sum of $500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.01(C) [Telematics].
f. The sum of $3,000 for each instance of a failure by the Contractor to comply with the provisions of Section 2.01(A).
g. The Contracting Agency will provide at least 5 working days of notice to the Contractor and opportunity to rectify before implementing these liquidated damages.

B. Liquidated damages received pursuant to this Agreement are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification, or the Contractor's obligation to indemnify the City, or to any other remedy provided for in this Agreement or by Law. The City may deduct and retain out of the monies which may become due under this Agreement, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

Type of Contract:
This is a "C" contract (Requirements Contract, or "RC") as defined in the New York City Purchase Contract ("310L"), Part II, Section 2.8 or, if applicable, the New York City Service Contract, Part II, Section 2.6.

In accordance with the New York City Purchase Contract, Part II, Section 5.6 (Alternate Products) or, if applicable, the New York City Service Contract, Part II, Section 5.5 (Alternate Services):

A bidder may not bid multiple products or services for one bid item. If a bidder offers more than one product or service only the lowest price offering will be considered. If the price offerings are identical, only the first item listed will be considered.

All items awarded under this contract must be in compliance with the New York City Mayor's Executive Order No. 113 (1988), "Prohibition of the Purchase of Products Made of Polystyrene Foam."

At any time, the City may, in its sole discretion, disapprove any provider(s) of goods and/or services that do not meet contract requirements used by the prime vendor/contractor to fulfill this contract. As used in this section, a "provider" shall include, but not be limited to, a subcontractor, a supplier or producer of goods and/or services and the manufacturer(s) of any goods being procured under such contract. As stated in this contract or otherwise at the City's sole option, the selected vendor may be required to provide to the City, within (10) days of award, a list of providers and, for each provider, its address, and the name of its principals.

The selected vendor shall provide any other information requested by the City, in its sole discretion, to determine whether a provider shall be disapproved. Furthermore, during the term of this contract, the selected vendor shall supply to the City all such information regarding any additional provider(s) it intends to use. The vendor may not use a provider that has been disapproved by the City.

The City may, in its sole discretion, withdraw any approval it has given, where such withdrawal of approval is based on information received subsequent to the approval. The selected vendor may not use a provider that has been disapproved by the City or whose approval has been withdrawn.

PASSPort
All vendors intending to do business with the City of New York must complete an online Procurement and Sourcing Solutions Portal ("PASSPort") disclosure filing to be considered for an award. Paper submissions, including Certifications of No Change ("CNC") will not be accepted in lieu of completed online filing. Failure to complete all required online filings may be cause for bid disqualification.

Please visit www.nyc.gov/passport for more information.

The City of New York utilizes multiple systems for dispatching orders to vendors, and receiving invoices (e.g. PASSPort, DCAS Direct Order, Etc.) Please be aware that the vendor is responsible for receiving orders and submitting invoices utilizing the system (s) designated for use in each particular contract/agreement, and should reach out to the managing City Agency for instructions on which system (s) will be utilized for ordering and payment/invoicing.

PASSPort Fees
Pursuant to Section 2-08 (f) of the Procurement Policy Board ("PPB") Rules, the selected vendor will be charged a fee for the administration of the PASSPort system, including the vendor name check

process by the New York City Department of Investigation. The selected vendor shall also be required to pay theapplicable required fees for any of its subcontractors for which vendor name check reviews are required. The fee(s) will be deducted from payments made to the selected vendor under the contract.

For contracts with an estimated value of less than or equal to $1,000,000, the fee will be $175. For contracts with an estimated value of greater than $1,000,000, the fee will be $350.

General Terms and Conditions

Accelerated Procurement
Unless otherwise noted in the bid, this contract is eligible for an accelerated procurement per section 3-07 of the PPB Rules. Accelerated procurements are not subject to vendor protest.

Purchase/Blanket Orders
This contract will be subject to the issuance of purchase orders ("PO") and/or blanket orders including but not limited to the following information: items, quantities, delivery instructions and timeline, and City contact personnel. It shall be incumbent on the vendor to seek clarification from the ordering City Agency if there is a discrepancy on the PO.

Blanket orders will indicate the maximum amount of money the City has set aside for the purchase of product(s).

Shipping instructions or standard releases on blanket orders will subsequently be issued indicating the quantities and delivery locations. It shall be incumbent upon the vendor to not exceed the amount of money authorized by the blanket order.

If shipping instructions are issued after a blanket order is depleted, the selected vendor must notify the agency and withhold shipping products until a new blanket order is issued.

Contract Quantities
Quantities specified herein are estimates based on experience. The quantities ordered are only those needed by the ordering agency. The City will not be compelled to order any specific quantity of any item, nor will the City be limited to the quantity specified. The ordering agency will generate shipping instructions stating the quantities they need to be delivered for each weekly, bi-weekly, or monthly period of the contract.

Contract Price

F.O.B.
All prices are to be based on freight on board ("F.O.B.") delivery point, unloaded, and inside. Prices on the bid shall be inclusive of any and all delivery and handling charges.

Contract Price
The selected vendor must process all purchase orders at the contract price in effect on the date of the purchase order and/or shipping instruction.

Price Adjustments

Price Adjustments

This contract shall be subject to price adjustments if specific price indices are listed herein for items on this contract. No price adjustment will become effective unless approved by the Agency Chief Contracting Officer ("ACCO") of the Department of Citywide Administrative Services ("DCAS") or his/her designee. The selected vendor must provide the City with written notice of a price change request at least thirty (30) calendar days prior to the requested effective date.

Price change requests, if approved, will affect future orders only. The City will issue the vendor a contract modification notice indicating the price adjustment and effective date. Any purchase order that has already been generated prior to the price adjustment will reflect the then current price. This contract may be terminated by the City in the event that Contractor's price change requests do not reflect industry documentation.

Non-Automatic Price Adjustments

If price adjustment is not automatic, it is the selected vendor's responsibility to initiate the price adjustment request and confirm receipt of the request. The request must be in writing on company letterhead and addressed to the DCAS ACCO, or as otherwise directed by the City. The request must include price adjustment calculations, as further detailed herein, and must be signed by an officer or a duly authorized representative of the company. Requests should be sent by email to the analyst(s) assigned to the Contract at the DCAS Office of Citywide Procurement ("OCP") or sent to the following address:

Agency Chief Contracting Officer
Department of Citywide Administrative Services
Office of Citywide Procurement
1 Centre Street, 18th Floor
New York, NY 10007

Information for Price Adjustment

The selected vendor requesting a price increase may be asked to provide justification of its material cost. For the purpose of computing price increases, material cost may not exceed the selected vendor's unit price at the time of the increase request. Documentation for price increases must substantiate the change in price. Acceptable documentation to be provided, at a minimum, includes:

1. Manufacturer's notice of price increase.
2. Changes in the US Bureau of Labor Statistics Producer Price Index ("BLS PPI" or "PPI") specified in the contract, or otherwise applicable, as determined at DCAS' sole discretion.
3. Independent reporting discussing price increase (e.g., major news media, industry reports).
4. Vendor history of supplier invoicing showing price change.

If, in the City's sole discretion, the documentation provided by the selected vendor does not justify the price adjustment request, the City may decline such request.

Unless otherwise stated in the contract, price adjustments shall only be considered three (3) months after the most recent previous price adjustment. Additionally, the documentation provided by the vendor for justification of the price increase must be dated after the most recent price adjustment.

BLS PPI Price Adjustments

On contracts where price adjustments are based on a BLS PPI, the contract shall state the price index that applies to the contract. The calculation will be based on the percent change from the PPI base month to the most recent actual month. The base month will be the month of the bid opening. Only the most recent actual data will be used, not preliminary. All indexes are subject to revisions four (4) months after the original publication.

In the event it takes longer than six (6) months from bid opening to contract registration, a price adjustment based on PPI may be considered at the discretion of the City.

BLS PPI Calculation:

Adjusted Price = Bid Price + (Material Cost X ((B-A)/A))
Where:
Material Cost if the Portion of the Bid Price Subject to a Price Increase
A = PPI for the base month
B = Most recent Actual PPI

BLS PPI Calculation Example:

Bid Price: $112	Base PPI: 134.3
Material Cost: $100	Current Actual PPI: 137.1

Adjusted Price = ($112) + ($100 X ((137.1-134.3)/(134.3))) = $114.08

When the price index conflicts with manufacturer's material cost (as reflected in the manufacturer's notice or invoices), DCAS may, at its sole discretion, adjust prices to reflect manufacturer’s data.

Vendors requesting a price adjustment must have inputted their material costs as part of their bids. Failure to include material costs may preclude any future price adjustments. Material costs may not exceed unit prices. The City may request the vendor justify their material costs.

The base PPI will be adjusted as required based on the method used for approved price adjustments at the discretion of the City.

Price Decrease

Price decreases must be offered by the selected vendor as soon as they become available on the most recently published PPI (specified in the contract, or as otherwise applicable, as determined at DCAS’ sole discretion) or other industry documentation. DCAS may, at its sole option, implement a price decrease immediately upon notification to the selected vendor if substantiated by the most recently published PPI or other industry documentation.

Bid Instructions

Bid Structure

Bids may be organized by class or item. If the bid is organized by item, bidders may bid on any combination of items on the bid. If the bid is organized by class, bidders must bid on all items in the class unless otherwise specified. Failure to bid all items in a class will render that class as non-responsive and may disqualify the bid. At the sole discretion of the City, any or all classes may be broken and be awarded on an item by item basis.

Read Carefully

Bidders are advised to carefully read the description for each item listed in a bid, including but not limited to packaging, sodium, brand, weight, unit of issue and local sourcing requirements. All items on the bid must meet the specifications of the City. Bidders are advised to provide all information required by the bid. Failure to complete and submit all required forms/fields or provide all required information may disqualify the bid.

Brand or Equal

When an item description specifies a brand "or equal," bidders offering brand(s) other than the brand specified are required to submit complete labels, nutritional information, packaging details and/or any other information necessary so that compliance with the City's specifications or salient characteristics may be determined. Bidders are required to describe any differences between the specifications or salient characteristic of the "or equal" product being offered.

Manufacturer or Equal

The specification of a particular manufacturer is intended to state a standard only and is not intended to preclude an equivalent product.

Food Label Submission

Food labels must be submitted with the bid. Food labels must include, without limitation, the nutritional profile, origin, and packaging characteristics of the product(s) being offered by the bidder. If food labels are not submitted with the bid, bidders must submit labels within (48) hours of the City's request to do so. Failure to submit labels could render the bid non-responsive.

Alternative Packaging

Where alternative packaging is considered acceptable by the City, items will be pro-rated based on a clear underlying measurement unit (e.g., pound or ounce) to determine the lowest bid.

Bid Submission

All bids must be submitted electronically in PASSPort on or before the due date and time.
All bid prices must be rounded to the nearest cent - $0.00.

Standards/Specifications

NYS Local Sourcing

Sourcing local food from New York State growers is a priority for City agency food procurements. Local Law 50 of 2011 (LL50) establishes guidelines for City agencies that assist in increasing the purchase of New York State food through food purchase and food-related services contracts. Such guidelines—the New York State Food Purchasing Guidelines (Appendix A) –apply to contracts valued at more than $100,000 for the purchasing of food products or food-related services (e.g., catering), and to any contract for social services through which more than $100,000 of food would be purchased annually in fulfillment of the contract. By submitting a bid, bidders acknowledge that they have read and understand the requirements of Appendix A.

Where specified in the solicitation, New York State ("NYS") local sourcing is required by this contract, based on the following definitions.

"MUST BE NEW YORK STATE SOURCED" means food products whose essential components are grown, produced or harvested in New York State, or food products where any processing of such food products took place in facilities located within New York State, and which are included in the list of such products promulgated by the NYS Department of Agriculture and Markets (Appendix A).

"MUST BE NEW YORK STATE GROWN" means unprocessed agricultural products must be grown, harvested, or produced in NY state. For any processed product, at least 51% of raw agricultural ingredients must be grown, harvested, or produced in NY state.

All bids must include proof of product origin that satisfies the local sourcing specification, as identified.

For more information about NYC LL50, please visit the following site:

- https://www.nyc.gov/site/mocs/regulations/food-policy-standards.page

NYC Food Standards

Unless otherwise stated in the solicitation, the selected vendor must comply with the New York City Food Standards, attached to this procurement, and made a part of this contract as Appendix B. By submitting a bid, bidders acknowledge that they have read and understand the requirements of Appendix B.

The successful bidder will be required to comply with all applicable provisions of the New York City Food Standards. The selected vendor will also be required to comply with any new and/or changes to the food standards during the term of the contract.

Additionally, the selected vendor shall attach the food standards to any subcontract hereunder involving the provision of food or beverages. The selected vendor shall require any subcontractor(s) to comply with all applicable provisions of the food standards as attached as well as any new and/or changes during the term of the subcontract.

Implementation of New Standards

Notwithstanding the foregoing, if the implementation of such new or changed food standards will result in a material adverse effect on the selected vendor's cost, upon submission to the City of satisfactory documentation demonstrating such effect, the selected vendor and the City may mutually agree to amend the contract as to price subject to all necessary approvals. If the City and the selected vendor are unable to reach agreement on such amendment, the City and the selected vendor may resolve this dispute in accordance with section 4-09 of the PPB Rules. The selected vendor shall continue to perform under the contract and shall comply (and shall ensure that its subcontractors comply) with the new and/or changed food standards as directed by the City.

Special Audit Program

If and then to the extent indicated in the solicitation, the selected vendor must source all Special Audit Program products (the "Special Audit Items") from a Farm that is in good standing with an independent

Special Audit Program that meets the minimum requirements set forth in the applicable solicitations.

Halal & Kosher Certification
For bids where items are specified to be either halal or kosher, proof of New York State Department of Agriculture and Markets Halal or Kosher Registration as well as appropriate third-party certifications for all applicable food products are required to be submitted with the bid. In the event that DCAS or the ordering agency requests additional or supporting documents, the bidder shall provide the requested documents within five (5) days of such demand. Products represented as halal or kosher must be labeled as "halal" or "kosher". Food must be certified separately for kosher or halal. Food certified as kosher cannot be represented as halal, and food certified as halal cannot be represented as kosher. The vendor is required to provide additional documentation to City to meet the minimum requirements as noted on the specifications of the Halal or Kosher specific bid/items.

Artificial Sweeteners
No artificial sweeteners or non-nutritive sweetening agents, and no artificial colors or flavors are permitted as ingredients of any items listed in the bid.

Additional Specifications
Frozen Halal or Kosher dinners: meat and poultry used in the preparation of the items shall be US Department of Agriculture ("USDA") inspected.

Fish: Must be processed and packed in approved plants operated under USDA and/or State inspection.

Vegetable products indicated for each item shall be U.S. Grade No. 1, Grade A Fancy, or equivalent (as determined at the sole discretion of the City), unless otherwise noted.

All other products and/or ingredients used for which no grade is indicated must be of first quality only.

USDA grading certificates are required for items on the purchase order totaling (250) cases or more, regardless of delivery quantity requested. The cost of inspection and grading by the USDA shall be borne by the selected vendor.

Products offered and delivered must be prepared from the latest season pack.

Labeling

Case Markings
The identifying purchase order number must be stamped on each case delivered by the selected vendor. Failure to comply with this stipulation may be cause for rejection of a delivery. All markings must be legible.

Product Markings
Unless otherwise stated in the item's specifications, all products for delivery shall have markings indicating date of manufacturer and/or expiration date clearly marked on the individual package. Shelf-stable products at the time of delivery must have a minimum of 75% shelf-life remaining.

Package Markings

Each package label must contain a list of ingredients.

NYS Product Markings

All New York State ("NYS") sourced or grown products must be labeled as such and indicate where the products were grown and/or processed within NYS.

Special Audit Program Markings

If applicable, all Special Audit Program products (the "Special Audit Items") must have markings on each case that indicate the farm source and location where the Special Audit Items were grown. Failure to comply with this stipulation may be cause for rejection of a delivery. All markings must be legible.

FDA Compliance

Product labels must adhere to the latest Food and Drug Administration ("FDA") rules and regulations that are in effect at the time of delivery.

Nutrition Labeling

A nutrition fact panel, indicating the nutrient content of the product(s), is required on the principal display panel of each product and case.

Trans-fat Labeling

Products containing trans-fat are not acceptable.

Ingredient Labeling

Labels must declare all ingredients in the food product. Additionally, the label must specify allergens when the ingredient does not clearly state any of the eight major allergen categories as specified in the Food Allergen Labeling and Consumer Protection Act of 2004: Milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

Other

All items must be individually wrapped and labeled indicating quantities on each pack. Products represented as halal or kosher must be labeled as "halal" or "kosher". Food must be certified separately for kosher or halal. Food certified as kosher cannot be represented as halal, and food certified as halal cannot be represented as kosher.

Packaging

Recycled Products

Products offered should be packaged from recycled, recovered or environmentally preferable materials to the maximum extent possible provided that the product meets all specifications and performance criteria and promotes economically advantageous life cycle costs, or as otherwise required by applicable law.

Waste Reduction

Whenever practicable, packaging shall eliminate waste; reduce waste by weight, volume, and toxicity without substituting a material that is not recyclable; and should contain recycled content.

Commercial Best Practice

All products must be packed in accordance with best commercial practice. Salvaged and returned products will be rejected by the City. All packaging and packing materials must be clean and in new condition, must be of commercial quality, must not impart objectionable odors or flavors to the food products, must be safe (not adulterated or injurious to health) for use in contact with food products, and must be tamper-evident. Tamper-evident is defined as packaging material with one or more barriers to entry, which if breached or missing can reasonably be expected to provide visible evidence that tampering has occurred.

Transparent Red Bags

Transparent plastic bags with red coloring have been designated by the City as packaging for bio-hazardous material. Red plastic wraps or bags are not to be used to hold or pack food items. Any products packaged in this type of material will be deemed not acceptable and will automatically be rejected by the City.

Canned Goods

For industrial packed canned goods, the City will only consider awarding products packed in number 10 cans. Food products packed in number A10 cans will be deemed not acceptable and will automatically be rejected by the City.

Delivery

Fulfilling Orders

Orders shall be made according to the specifications detailed in this contract, or shipping instructions sent by ordering agencies via food requisition matrices and orders. If not explicitly stated, the selected vendor is expected to deliver within thirty (30) calendar days upon receipt of an order.

Late Deliveries

When deliveries will be late, the selected vendor must notify DCAS Office of Citywide Procurement (“OCP”) and the ordering agency at least (48) hours before the scheduled delivery date.

Delivery Locations

Delivery shall be made to various points within the City as detailed in this contract or as shall be otherwise indicated on individual purchase orders.

Closing/Opening of Delivery Locations

During the term of the contract, delivery locations specified herein or in purchase orders issued pursuant to this contract may be closed and deliveries terminated. In the event that any new delivery location is identified by the City in a purchase order, the selected vendor will be required to service the new location under the same terms and conditions and at the same price as all delivery locations detailed in this contract.

Rejections and Buy-Against

If any of the following occurs, the City, in its sole discretion, shall buy against the selected vendor in accordance with Section 4-07 of the PPB Rules:

1. Delivery is rejected and the selected vendor refuses to make immediate delivery of acceptable

goods or re-delivers unacceptable goods.

2. Deliveries are not made in accordance with the schedule and/or not made.

Inspection

To facilitate orderly and expedient inspection of deliveries, the selected vendor must provide the DCAS Bureau of Quality Assurance ("BQA") food inspectors with delivery schedules listing the following information one (1) week before scheduled deliveries:

1. Date of delivery;
2. City agency and delivery location;
3. Items and quantity of items to be delivered;
4. Contract and purchase order number;
5. Farm source and farm location (if the solicitation indicates the Special Audit Program requirements are applicable);
6. Farm source and farm location (if the solicitation indicated NY State Grown requirements are applicable); and
7. Manufacturer or processor location (if the solicitation indicates NY State Sourced requirements are applicable).

Failure to provide such information may result in inspections not being made and payment approvals not granted.

Refrigeration

Fresh and frozen products that require refrigeration must be delivered in such a manner at the time of delivery. Deliveries of such refrigerated products shall be made in clean and refrigerated trucks as per Form 23-Y-83A (revised 7/18/13) attached to this contract and made a part hereof, if applicable.

Quality Assurance

Inspection

BQA food inspectors will inspect food delivery for compliance for any or all of the following requirements where applicable:

1. NYC specification(s) detailed in the item descriptions of the award
2. Brand specified on the award and the purchase orders
3. Acceptable brands list (pursuant to PPB Rules, section 2-05)
4. Commercial item description
5. 75% shelf-life of shelf-stable products
6. Packaging requirements
7. USDA grading requirements
8. Farm, manufacturer or processor location (if the solicitation indicates NYS grown or sourced specifications)
9. Farm source and farm location (if the solicitation indicates NYS grown or sourced specifications and/or the Special Audit Program requirements are applicable)

Rejections

In the event that BQA food inspectors reject deliveries due to non-compliance with the applicable requirements mentioned above, each ordering agency will disseminate the following information to each of its delivery locations:

1. Vendor name
2. Description of item
3. Contract and purchase order item number
4. Lot number
5. Manufacturer code number
6. Reason for rejection

Deliveries of these rejected items will not be accepted by any City agency until the issues have been resolved.

Removal of Rejections

The following paragraph supersedes Section 5.2 of the New York City Purchase Contract on the removal of rejected and non-conforming goods (pages 15-16):

For the purpose of this contract, the seller shall remove any non-conforming goods or part thereof at the seller's own expense as soon as possible and no later than forty-eight (48) hours after notification of any rejection or revocation of acceptance by the City. The City, in its sole discretion, shall have the right to dispose of rejected goods left longer than forty-eight (48) hours at no cost or liability to the City and the seller shall have no right of action for damages.

Health Regulations

Please note the provisions on pages 16-17 (section 6.3) of the New York City Purchase Contract regarding health regulations: Any food, drug or other Goods which are found to be unwholesome, or otherwise unfit for human consumption or use, shall not be removed by the Seller until examined by the appropriate public authorities. If condemned, such Goods shall be disposed of by the Seller in accordance with the rules and regulations of the appropriate public authorities.

Should the Seller fail to make disposal within twenty-four (24) hours after appropriate order to do so, the City may make such disposal and charge the Seller for the cost involved.

USDA Grading

If USDA grading is required, grading certification(s) should be sent to:

NYC Department of Citywide Administrative Services
Officeof Citywide Purchasing/Bureau of Quality Assurance
1 Centre Street, 18th Floor
New York, NY 10007

The cost of grading and inspection shall be borne by the selected vendor and shall be deemed included in the price on the bid.

Waiver

To request a waiver on specific product requirements of a purchase order under this contract, vendor shall e-mail the Office of Citywide Procurement with the following information:

1. Date of waiver request
2. Reason for waiver request (Ex; grading issues, address, contact information of the USDA office)
3. Supporting documentation from vendor/manufacturer showing proof of issue why specific product specification requirements cannot be met as per waiver request.
4. Purchase order Number
5. Product/Item

All food specification waiver requests are reviewed by Office of Citywide Procurement Bureau of Quality Assurance prior to issuance. Office of Citywide Procurement reserves the right to grant or reject waiver requests.

Deduction

In some instances, the City may retain possession of items delivered that do not meet the specific product requirements of the purchase order, due to extreme public necessity and apply a monetary deduction in accordance with PPB rules and regulations and only with approval of DCAS Administration. If no definite deductions are prescribed, the City will make such deductions as it shall determine to be reasonable.

Food samples

The City may request samples of any item offered in response to this solicitation to test said item for compliance to specifications. If so requested, such sample shall be furnished within two (2) business days.

Samples submitted by vendor(s) must be the exact representation of the product to be delivered to the ordering agency in quality and packaging.

Sample Evaluation(s) by Agency

If detailed in the specifications/requirements of the Bid, the City may request the vendor to submit samples to be evaluated by an ordering agency's taste test panel. The panel is part of an ordering agency's process to ensure that the foods ordered pursuant to this contract are acceptable and minimize safety concerns. Samples that are determined to be unacceptable by the panel may result in the rejection of the bid or cancelation of the contract, at the City's sole discretion, pursuant to the New York City Purchase Contract, Part II, Section 4.3(a).

Food Product Substitution

If, during the term of this contract, the product offered becomes unavailable, a substitute product may be approved by the City under the following conditions:

1. A written request is made by e-mail to the director of food procurement unit requesting a product substitution. This request must include the name of the originally offered and accepted product, the name of the proposed substitute product, the reason why the substitution is being requested, and a statement as to whether the substitution is for one delivery or for the remaining balance of the contract.

2. No substitution may be made without the prior, written approval from the City.

3. A substitution request must be initiated a minimum of two (2) weeks before the scheduled

delivery.

4. The price of the substitution must be equal or less than the original awarded unit price of the item.

5. If requested by the City, samples, in their exact representation of the substitute product, must be provided to the City with the product substitution request along with a sample of the product being replaced. Samples will be reviewed by Bureau of Quality Assurance for equivalency prior to acceptance.

6. Any substitute product must meet all applicable specifications described in the award contract for the item being replaced.

7. Where applicable, additional paperwork such as nutritional fact label, nutritional lab analysis, Halal/Kosher or NYS certification, and proof of good standing with an independent Special Audit Program must be included. All costs associated with lab testing are to be borne by the selected vendor.

8. If a substitute product is approved by the City, the selected vendor shall not mix lots upon delivery. The selected vendor must deliver one brand product for each shipment. Additionally, the original product may not be delivered once the substitute is approved unless the above procedure to re-approve the original product is followed.

The City reserves the right to request additional information from a vendor to determine if a proposed substitute item is equivalent to the original.

Invoices

Invoices are to be submitted to the City through PASSPort, unless otherwise noted by City.

Good Food Purchasing Reporting Requirement

Bidder must demonstrate their ability to comply with the requirements of Executive Order 8, “Commitment to Health and Nutrition: Food Standards and Good Food Purchasing” (Attachment B). Executive Order 8 establishes New York City’s commitment to comply with the NYC Food Standards measuring food procurement against the values of the Good Food Purchasing (GFP) initiative.

To demonstrate compliance with the GFP initiative, bidders shall provide detailed product sourcing data. This data allows the City to measure its food procurement across the values of the GFP initiative, including transparency, environmental sustainability, local economies, nutrition, a valued workforce, and animal welfare. A redacted version of the data will be made public as part of its commitment to transparency as defined in Executive Order 8.

Upon request by the City, bidders shall provide to the City detailed product sourcing information for all food and beverage products purchased and distributed. Attachment B includes a full description of data requirements for contracted vendors and a preliminary data report to be submitted as part of the bid.

Information provided should include, but is not limited to, the following sourcing information for all foods and ingredients:

- Purchase, Transaction or Delivery Date
- Agency Name (DHS, Aging etc.)
- Feeding Program Location Name (Lenox Hill, etc.)
- Delivering Entity Name (Distributor, Processor, Caterer, Farm, etc.)
- Manufacturer/Farm Name
- Brand Name
- Pack Size
- Item Weight
- Item UOM
- Case Net Weight
- Product Description
- Product Category
- Distributor Product Code
- Mfgr. Code
- Item Number
- SKU/Item Code
- Total Quantity Purchased
- Total Spend
- Feeding Program Delivery Location Address Full
- Source Distributor/Vendor/Farm Address Full
- *Available Product Attribution (Optional, e.g. USDA Organic, M/WBE, Kosher or Halal)*

Data should be provided to the City in an acceptable machine-readable format including but not limited to Excel. Paper invoices, pdfs or scanned images are not an acceptable format.

Please see GFP documents attached to this bid for more details.

For more information about the MOFP GFP program, please visit the following site: https://www.nyc.gov/site/foodpolicy/good-food-purchasing/good-food-purchasing.page

SCOPE/INTENT OF CONTRACT
The purpose of this Requirements Contract ("RC") is to procure Fresh Fruits and Vegetables for the City of New York (the "City"). The sponsoring agency is Department of Correction ("DOC").

Although the sponsoring City agency is expected to be the primary user of this contract, as a citywide requirements contract, other City agencies who require the items awarded under this bid/contract, may also issue purchase orders against this contract.

CONTRACT TERM
This contract shall be for a one-year term.

Anticipated contract term:
From: January 1, 2027
To: December 31, 2027

The City reserves the right, prior to contract registration, to change (adjust) the start and end dates as noted above. The City further reserves the right to change (adjust) these dates after contract registration to reflect the actual registration date.

Note: In recognition of lead times required for requests made by user agencies, and to prevent any overlap for similar goods, this contract may become active 1-2 months prior to the first date of delivery. Unless otherwise noted, vendors cannot begin delivery until start of delivery date stated in writing from the City (e.g. Purchase Orders, or written Notice to Proceed).

BASIS FOR AWARD
In accordance with the New York City Charter, the Procurement Policy Board ("PPB") Rules and the terms and conditions of this invitation to bid, this contract shall be awarded, if at all, to the lowest responsive and responsible vendor(s) whose bid(s) meet the specifications and requirements set forth in this bid.

Failure to complete the pricing section in its entirety will result in a bid being determined to be non-responsive in accordance with the PPB Rules.

The City reserves the right to request any additional information necessary to determine the bidder's ability to perform the work and supply the products in accordance with the contract. The City also reserves the right to conduct a site visit to ensure that bidders have the production and distribution capabilities and capacity to deliver the products under this contract. If requested, the information must be submitted five (5) calendar days after the request. Site visits will be scheduled as necessary and may be mandatory.

BIDDER QUALIFICATION/REQUIREMENTS
Bidders for this contract should be in the food supply business selling similar food commodities for a minimum of two (2) years prior to the bid opening date. Bidders must have a background in food supply and logistics selling like products to similar government entities.

The bidder should be prepared to submit contact names and information for a minimum of three (3) City, State, County, or other similar government organizations confirming successful participation.

For each reference submitted to meet the experience requirements set forth above, the bidder must provide the following information:

- Name of the vendor
- Name and location of project
- Name, Title, and Contact Information of the owner or owner's representative who is familiar with the bidder's work on the project
- Brief description of the work completed
- Indicate whether the work was performed as a prime contractor or a subcontractor. If a subcontractor, provide the name and contact of the prime contractor
- Amount of the contract or subcontract
- Period of performance

In the event the bidder is a joint venture, at least one firm in the joint venture must meet the above-described experience requirements. Bidders must disclose if the bidder is a joint venture at the time of bid submission.

Bidders shall submit the information listed above in PASSPort with their bid submission. A bidder's failure to submit information with their bid submission will result in the Agency determining the vendor to be non-responsive. In the event that the City requires additional or supporting information to clarify the bidder's submission, the bidder shall provide the requested information within seventy-two (72) hours of such demand.

The City reserves the right to request any additional information necessary to determine the bidder's ability to perform the work and supply the products in accordance with the contract. The City also reserves the right to conduct a site visit to ensure that bidders have the production, distribution capabilities and capacity to deliver the products under this contract.

<u>NYC LOCAL LAW 50 OF 2011("LL50") – NEW YORK STATE FOOD SOURCING</u>

New York State products are defined as "products whose essential components are grown, produced or harvested in New York State, and processed food that is processed in facilities within New York State, or food products where any processing of such food products took place in facilities located within New York State, and which are included in the list of such products promulgated by the NYS Department of Agriculture and Markets."

Bidders must include certified documentation with their bid as proof that the product meets the definition of a "New York State Product".

For more information about NYC LL50, please visit the following site:

- https://www.nyc.gov/site/mocs/regulations/food-policy-standards.page

<u>FOOD SPECIFICATIONS</u>

The awarded vendor must deliver products that comply with the following specifications for items within this contract:

- Fruits (Fresh) Specification # 14-F-14 :22A
- Vegetables (Fresh) specification # 14-V-10:22A

DOC FOOD DELIVERY INSTRUCTIONS

DOC Nutritional Services Division ("NSD") will provide a matrix (food delivery request) of requirements to the vendor mid-month for delivery in the following month. Each item will be listed with weekly, bi-weekly or monthly quantities as well as total for the month. Delivery dates and delivery locations will be also listed. Timely deliveries are essential to daily operations of the DOC. It is incumbent on the vendor to adhere to the delivery schedule and notify the Agency immediately if there is a possibility of a delay. Failure to do so will affect normal DOC operations and may subject the vendor to buy-against.

Please note weekly deliveries will be required unless otherwise noted.

Prior to delivery, the vendor is required to schedule an appointment for a specific day. DOC storehouse staff will determine if the day requested is available. If the requested day is not available, the vendor will be assigned an alternative date for delivery. Vendors must deliver on the assigned date.

Appointments should be made the week before delivery by calling the following numbers. Failure to schedule an appointment (and receive confirmation from the Agency), may subject the delivery attempt to be rejected, with the vendor absorbing any additional delivery costs without penalty to the Agency.

- 718-546-3630 For Grocery/Frozen/Meat Appointments
- 718-546-5400 For Bakery Food Appointments

All deliveries are to be made Monday through Friday between 6am and 12pm noon. Please note the following regarding transporting products:

- For deliveries requiring palletizing, pallets provided by the vendor shall be CHEP or approved equal pallets.
- All deliveries of palletized product must fit on the pallet. Cartons should be interlocked and shrink-wrapped together with the pallet to minimize shifting of the load during transport.
- All pallets in the truck should be facing the same direction to allow for easy loading and unloading by forklifts.
- The maximum height of palletized loads for all products, including frozen foods, is six feet (6'0") in height.
- Do not mix items on a pallet. If this occurs for an accepted reason, the pallet must be marked: "mixed pallet".
- Cartons should be sized to accommodate the contents in a way to minimize air pockets at the top of the carton.
- Each carton must be marked with 1) name of the food product, 2) issue date and/or expiration date, and 3) purchase order # assigned by DOC.
- Each pallet must have a sheet on the top row front, noting the number of cases on the pallet. The address must be affixed on the carton to read:
  - Deliveries for the NYCDOC (Vendor Name), (Delivery Point/Address)
- At the time of delivery, the delivery truck driver(s) must bring and present a "bill of lading" to the DOC's Storehouse staff for review/ signature to confirm delivery/receipt of items. The bill of lading must:
  - Be clearly printed/ legible
  - contain the name of the vendor
  - List correct food item(s), price, and quantity
  - Include NYCDOC purchase order number.

This contract requires the awarded vendor(s) to deliver to the following DOC locations:

NYC DOC Riker's Island
Central Freezer, Gate #5
18-18 Hazen Street
East Elmhurst, NY 11370

Although the primary delivery location(s) are noted within the contract, individual issued purchase orders will note the specific delivery location(s) per the PO. However, vendors must factor into their pricing, deliveries to any point within the City of New York as detailed on individual purchase orders, shipping instructions, and/or drop shipments may be made.

Deliveries shall be made in accordance with instructions on the purchase order from each agency. If there is a discrepancy on the purchase order, it is the contractor's obligation to seek clarification from the ordering agency.

COPYRIGHT PROVISION

Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this contract, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this contract, shall upon their creation become the exclusive property of the City.

Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this contract ("copyrightable materials") shall be considered "work-made-for-hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the copyrightable materials do not qualify as "work-made-for-hire," the contractor hereby irrevocably transfers, assigns, and conveys exclusive copyright ownership in and to the copyrightable materials to the City, free and clear of any liens, claims, or other encumbrances. The contractor shall retain no copyright or intellectual property interest in the copyrightable materials. The copyrightable materials shall be used by the contractor for no purpose other than in the performance of this contract without the prior written permission of the City. The department may grant the contractor a license to use the copyrightable materials on such terms as determined by the department and set forth in the license.

The contractor acknowledges that the City may, in its sole discretion, register copyright in the copyrightable materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The contractor shall fully cooperate in this effort and agrees to provide any and all documentation necessary to accomplish this.

The contractor represents and warrants that the copyrightable materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the copyrightable materials incorporate any non-original material, the contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this contract, copies of which shall be provided to the City upon execution of this contract.

If the services under this contract are supported by a federal grant of funds, the federal and state government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or state government purposes, the copyright in any copyrightable materials developed under this contract. If the contractor publishes a work dealing with any aspect of performance under this contract, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

PATENTS AND INVENTIONS

The contractor shall promptly and fully report to the department any discovery or invention arising out of or developed in the course of performance of this contract. If the services under this contract are supported by a federal grant of funds, the contractor shall promptly and fully report to the federal government for the federal government to make a 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.

PRE-EXISTING RIGHTS

In no case shall the "copyrights" and "patents and inventions" sections apply to or prevent the contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this contract that existed prior to or was developed or discovered independently from the activities directly related to this contract.

ANTITRUST

The contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the state or of the United States relating to the particular goods or services procured by the City under this contract.

PROPRIETARY INFORMATION/TRADE SECRETS

The bidder shall identify those portions of their bid that they deem to be confidential, proprietary information or trade secrets, and provide justification for why such materials shall not be disclosed by the City. All materials the bidder desires to remain confidential shall be clearly indicated by marking the pages on which such information appears, at the top and bottom thereof with the word "confidential." Such materials marked "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 communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder. 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.

QUESTIONS

All questions concerning this bid shall be in writing and sent via email to the procurement analyst(s) as detailed in PASSPort.

The deadline to ask questions is seven (7) calendar days before the bid opening date. Questions posed after this deadline may not be addressed.

NOTE

This award is to be made by class. Bidders must bid on all items within a class unless otherwise specified. Failure to bid on all items within a class will render that class invalid and may disqualify the bidder's bid.

Please see bid sheet for more information.

DOC - Fresh Fruits & Vegetables

Bidder Name / Address / Contact Person & Contact Info:

**** IMPORTANT NOTES:**

1. Bidder must complete/provide entries for all cells (and all items) where noted ("Orange Cells"). Failure to complete this sheet in its entirety (and bid on all items within an Item Class) may subject your bid to being non-responsive (at the sole discretion of the City).

2. Bidders must submit all documentation/information/labels (including, but not limited to NUTRITIONAL LABELS, NY STATE SOURCING DOCS, HALAL/KOSHER CERTIFICATES, etc.) with their bid submissions, or within (7) calendar days of a request from the City. Please ensure all documentation is labeled/marked with the Bid EPIN, Item Code, & Brief Item Description.

CLASS 1 TOTAL (NYS GROWN FRUITS AND VEGETABLES)	$ -
CLASS 2 TOTAL (VEGETABLES)	$ -
CLASS 3 TOTAL (FRUITS)	$ -

CLASS	Item Code	Item Label	Item Description	Additional Requirements (*Packaging, Growing Req's, Etc.)	Serving Size	Max. SODIUM Limit per Serving (mg)	Max. SUGAR Limit per Serving (g)	Minimum FIBER per Serving (g)	Quantity	Unit	Quantity per CASE/BOX (e.g. LBS per CASE/BAG)	Brand/Manufacturer Being Offered	Material Cost	FOB Destination ("Delivered") Unit Price	Total Value (FOB Destination Unit Price X Quantity)
		CLASS 1 - NYS GROWN FRUITS AND VEGETABLES													
Class1	C1-i01	APPLES (MACHINTOSH, BRAEBURN, FUJI, GALA, RED DELICIOUS, GOLDEN DELICIOUS, WINSEAP, EMPIRE, IDA RED, CORTLAND VARIETIES) (* MUST BE NEW YORK STATE GROWN)	U.S. FANCY or equal. NY STATE GROWN. CELLO/TRAY PACK. "RED CHIEF" BRAND OR EQUAL.	AVERAGE 125 APPLES PER BOX, 40-50 LBS. PER BOX.					5,000	BOXES			$ -	$ -	$ -
Class1	C1-i02	CABBAGE, WHITE (* MUST BE NEW YORK STATE GROWN)	U.S. NO. 1 or Equal. NY STATE GROWN. 2-5 LBS EACH.	50 LBS PER BAG.					2,830	BAGS			$ -	$ -	$ -
Class1	C1-i03	CARROTS (* MUST BE NEW YORK STATE GROWN)	U.S. NO. 1 or equal. NY STATE GROWN. 3/4" TO 1-1/2" DIA., 5" LONG MIN.,	40-50 LBS PER BAG.					830	BAGS			$ -	$ -	$ -
Class1	C1-i04	CARROTS, BABY, KOSHER, INDIVIDUALLY SEALED SNACK BAGS (* MUST BE NEW YORK STATE GROWN)	NY STATE GROWN. KOSHER. MUST BE MARKED/CERTIFIED WITH KOSHER CERTIFICATION SYMBOL. "GRIMMWAY" BRAND OR EQUAL.	2.6 OZ BAGS, 100 BAGS PER CASE.					166	CASES			$ -	$ -	$ -
Class1	C1-i05	CELERY (* MUST BE NEW YORK STATE GROWN)	U.S. NO. 1 or equal. 2 TO 2-1/2 DOZEN EACH. "DAGELE" BRAND OR EQUAL. NY STATE GROWN.	55 LBS PER CASE.					333	CASES			$ -	$ -	$ -

CLASS	Item Code	Item Label	Item Description	Additional Requirements (*Packaging, Growing Req's, Etc.)	Serving Size	Max. SODIUM Limit per Serving (mg)	Max. SUGAR Limit per Serving (g)	Minimum FIBER per Serving (g)	Quantity	Unit	Quantity per CASE/BOX (e.g. LBS per CASE/BAG)	Brand/Manufacturer Being Offered	Material Cost	FOB Destination ("Delivered") Unit Price	Total Value (FOB Destination Unit Price X Quantity)
Class1	C1-i06	CUCUMBERS (* MUST BE NEW YORK STATE GROWN)	U.S. FANCY o equal. NY STATE GROWN. 6" LONG MIN., 1-3/4" TO 2-3/8" DIA., "TORREY FARM" BRAND OR EQUAL.	40-50 LBS PER BOX.					1,333	CASES			$ -	$ -	$ -
Class1	C1-i07	LETTUCE, ICEBERG (* MUST BE NEW YORK STATE GROWN)	U.S. FANCY or equal. NY STATE GROWN. "CHURCH" BRAND OR EQUAL.	50 LBS PER BAG.					666	BAGS			$ -	$ -	$ -
Class1	C1-i08	LETTUCE, ROMAINE, FRESH (* MUST BE NEW YORK STATE GROWN)	NY STATE GROWN, "DAGELE BROTHERS PRODUCE" BRAND OR EQUAL	30 LBS PER CASE.					666	CASES			$ -	$ -	$ -
Class1	C1-i09	ONIONS, YELLOW (* MUST BE NEW YORK STATE GROWN)	U.S. NO. 1 or equal. NY STATE GROWN. 3" DIA. MIN. "TORREY FARM" BRAND OR EQUAL.	50 LBS PER BAG.					666	BAGS			$ -	$ -	$ -
Class1	C1-i10	PEARS, ANJOU OR BOSC (* MUST BE NEW YORK STATE GROWN)	U.S. NO. 1 GRADE or equal. NY STATE GROWN. FIRM TO RIPE.	120-125 PEARS PER STANDARD WESTERN BOX, 50 LBS. PER BOX.					4,000	BOXES			$ -	$ -	$ -
Class1	C1-i11	PEPPERS, GREEN COLOR, FRESH (* MUST BE NEW YORK STATE GROWN)	NY STATE GROWN. "FANCY" BRAND OR EQUAL	25 LBS PER CASE.					41	CASES			$ -	$ -	$ -
Class1	C1-i12	PEPPERS, RED COLOR, FRESH (* MUST BE NEW YORK STATE GROWN)	NY STATE GROWN. "FANCY" BRAND OR EQUAL	25 LBS PER CASE.					41	CASES			$ -	$ -	$ -
Class1	C1-i13	PEPPERS, YELLOW COLOR, FRESH (* MUST BE NEW YORK STATE GROWN)	NY STATE GROWN. "FANCY" BRAND OR EQUAL	25 LBS PER CASE.					41	CASES			$ -	$ -	$ -
Class1	C1-i14	PLUMS, SWEET, RED OR BLUE (* MUST BE NEW YORK STATE GROWN)	U.S. NO. 1 GRADE or equal. NY STATE GROWN. FIRM TO RIPE, SIZE 55 OR 60 PLUMS.	PACKED IN VOLUME-FILL BOX. 28 LBS. NET WEIGHT PER BOX.					466	BOXES			$ -	$ -	$ -
Class1	C1-i15	POTATOES, BAKING (* MUST BE NEW YORK STATE GROWN)	U.S. NO. 1 or equal. 8-10 OZ. EACH. NY STATE GROWN.	50 LBS PER BOX.					100	BOXES			$ -	$ -	$ -
Class1	C1-i16	POTATOES, MINI, WITH SKIN (* MUST BE NEW YORK STATE GROWN)	NY STATE GROWN.	3 LBS PER BAG.					666	BAGS			$ -	$ -	$ -
Class1	C1-i17	ROSEMARY, FRESH SPRIGS (* MUST BE NEW YORK STATE GROWN)	1 LB BUNCHES. "HILLSIDE HARVEST" BRAND OR EQUAL.	1 LB BUNCHES.					150	LBS			$ -	$ -	$ -
												DOC - Fresh Fruits & Vegetables - CLASS 1 TOTAL >>>			$ -

CLASS	Item Code	Item Label	Item Description	Additional Requirements (*Packaging, Growing Req's, Etc.)	Serving Size	Max. SODIUM Limit per Serving (mg)	Max. SUGAR Limit per Serving (g)	Minimum FIBER per Serving (g)	Quantity	Unit	Quantity per CASE/BOX (e.g. LBS per CASE/BAG)	Brand/Manufacturer Being Offered	Material Cost	FOB Destination ("Delivered") Unit Price	Total Value (FOB Destination Unit Price X Quantity)
		CLASS 2 - VEGETABLES													
Class2	C2-i01	CABBAGE, WHITE	U.S. NO. 1 or Equal. 2-5 LBS EACH. "IDAHO" BRAND OR EQUAL.	50 LBS PER BAG.					5,670	BAGS			$ -	$ -	$ -
Class2	C2-i02	CARROTS	U.S. NO. 1 or equal. 3/4" TO 1-1/2" DIA., 5" LONG MIN., "VEGPRO" BRAND OR EQUAL.	40-50 LBS PER BAG.					1,670	BAGS			$ -	$ -	$ -
Class2	C2-i03	CARROTS, BABY, KOSHER, INDIVIDUALLY SEALED SNACK BAGS	KOSHER. MUST BE MARKED/CERTIFIED WITH KOSHER CERTIFICATION SYMBOL. "GRIMMWAY" BRAND OR EQUAL.	2.6 OZ BAGS, 100 BAGS PER CASE.					334	CASES			$ -	$ -	$ -
Class2	C2-i04	CELERY	U.S. NO. 1 or equal. 2 TO 2-1/2 DOZEN EACH. "DAGELE" BRAND OR EQUAL.	55 LBS PER CASE					667	CASES			$ -	$ -	$ -
Class2	C2-i05	CILANTRO, FRESH	"HILLSIDE HARVEST" BRAND OR EQUAL.	1/3 LB PER BUNCH, 30 BUNCHES PER CASE.					100	CASES			$ -	$ -	$ -
Class2	C2-i06	CUCUMBERS	U.S. FANCY.6" LONG MIN., 1-3/4" TO 2-3/8" DIA., "TORREY FARM" BRAND OR EQUAL.	40-50 LBS PER BOX.					2,667	CASES			$ -	$ -	$ -
Class2	C2-i07	LETTUCE, ICEBERG	U.S. FANCY. "CHURCH" BRAND OR EQUAL.	50 LBS PER BAG.					1,334	BAGS			$ -	$ -	$ -
Class2	C2-i08	LETTUCE, ROMAINE, FRESH	"DAGELE BROTHERS PRODUCE" BRAND OR EQUAL	30 LBS PER CASE.					1,334	CASES			$ -	$ -	$ -
Class2	C2-i09	ONIONS, YELLOW	U.S. NO. 1 or equal. 3" DIA. MIN. "TORREY FARM" BRAND OR EQUAL.	50 LBS PER BAG.					1,334	BAGS			$ -	$ -	$ -
Class2	C2-i10	PARSLEY, FRESH, DRIED BUNCH	U.S GRADE 1. Hillside Harvest Brand or equal	1/3LB BUNCH. 30 BUNCHES PER CASE					1,000	CASES			$ -	$ -	$ -
Class2	C2-i11	PEPPERS, GREEN COLOR, FRESH	"FANCY" BRAND OR EQUAL	25 LBS PER CASE.					84	CASES			$ -	$ -	$ -
Class2	C2-i12	PEPPERS, RED COLOR, FRESH	"FANCY" BRAND OR EQUAL	25 LBS PER CASE.					84	CASES			$ -	$ -	$ -
Class2	C2-i13	PEPPERS, YELLOW COLOR, FRESH	"FANCY" BRAND OR EQUAL	25 LBS PER CASE.					84	CASES			$ -	$ -	$ -

CLASS	Item Code	Item Label	Item Description	Additional Requirements (*Packaging, Growing Req's, Etc.)	Serving Size	Max. SODIUM Limit per Serving (mg)	Max. SUGAR Limit per Serving (g)	Minimum FIBER per Serving (g)	Quantity	Unit	Quantity per CASE/BOX (e.g. LBS per CASE/BAG)	Brand/Manufacturer Being Offered	Material Cost	FOB Destination ("Delivered") Unit Price	Total Value (FOB Destination Unit Price X Quantity)
Class2	C2-i14	POTATOES, IDAHO BAKING	U.S. NO. 1 or equal. 8-10 OZ. EACH. "IDAHO" BRAND OR EQUAL.	50 LBS PER BOX.					200	BOXES			$ -	$ -	$ -
Class2	C2-i15	POTATOES, MINI, WITH SKIN	"THE LITTLE POTATO CO." BRAND OR EQUAL	3 LBS PER BAG.					1,334	BAGS			$ -	$ -	$ -
Class2	C2-i16	THYME, FRESH WHOLE LEAF	Hillside Harvest Brand or equal	2.2 LBS PER CASE					1,000	CASES			$ -	$ -	$ -
												DOC - Fresh Fruits & Vegetables - CLASS 2 TOTAL >>>			$ -
		CLASS 3 - FRUITS													
Class3	C3-i01	APPLES (MACHINTOSH, BRAEBURN, FUJI, GALA, RED DELICIOUS, GOLDEN DELICIOUS, WINSEAP, EMPIRE, IDA RED, CORTLAND VARIETIES)	U.S. FANCY or equal. CELLO/TRAY PACK. "RED CHIEF" BRAND OR EQUAL.	AVERAGE 125 APPLES PER BOX, 40-50 LBS. PER BOX.					10,000	BOXES			$ -	$ -	$ -
Class3	C3-i02	BANANAS, CAVENDISH	HANDS ONLY WITH FINGERS, GREEN TIP, 6" TO 8". "DEL MONTE" BRAND OR EQUAL.	50 LBS. PER BOX.					8,000	BOXES			$ -	$ -	$ -
Class3	C3-i03	ORANGES, CALIFORNIA VALENCIA	U.S. NO. 1 GRADE or equal. MEDIUM SIZE. "SUNKIST" BRAND OR EQUAL.	AVERAGE 88 ORANGES PER BOX, 50 LBS. PER BOX.					10,000	BOXES			$ -	$ -	$ -
Class3	C3-i04	PEARS, ANJOU OR BOSC	U.S. NO. 1 GRADE or equal. FIRM TO RIPE. "CHELAN" BRAND OR EQUAL.	120-125 PEARS PER STANDARD WESTERN BOX, 50 LBS. PER BOX.					8,000	BOXES			$ -	$ -	$ -
Class3	C3-i05	PLUMS, SWEET, RED OR BLUE	U.S. NO. 1 GRADE or equal. FIRM TO RIPE, SIZE 55 OR 60 PLUMS. "WOMA FARMS" BRAND OR EQUAL.	PACKED IN VOLUME-FILL BOX. 28 LBS. NET WEIGHT PER BOX.					934	BOXES			$ -	$ -	$ -
Class3	C3-i06	TOMATOES, CHERRY (* SUBJECT TO SPECIAL AUDIT)	U.S. NO. 1 GRADE or Equal. THIS ITEM MUST COMPLY WITH THE SPECIAL AUDIT PROGRAM. SEE SPECIAL AUDIT DOCUMENT ATTACHED FOR DETAILS.	12 PINTS PER CASE. "EL CAMPO" BRAND OR EQUAL.					300	CASES			$ -	$ -	$ -
												DOC - Fresh Fruits & Vegetables - CLASS 2 TOTAL >>>			$ -

SUPPLEMENTARY TERMS AND CONDITIONS FOR PERISHABLE FOOD STUFFS ONLY

QUALIFICATION OF BIDDERS

Bids will be considered only from bidders who have been in the business as purveyors of perishable foodstuffs for at least two years. A bidder, at least one of whose active principals shall have had the required experience, shall be qualified under this requirement.

Bidder must demonstrate that it has access to a physical plant which is adequate in every respect to properly handle, store and prepare perishable foodstuffs of the quality and quantity required by the City of New York. The access can be obtained in one of the following ways.

1. Bidder is a Broker:
   Manufacturer/Processor's facility meets the requirement. Product is drop shipped.

2. Bidder is the Manufacturer:
   Facility must meet the requirement.

3. Bidder is a Distributor:
   Bidder must own, rent or have access to physical space which meets the requirement.

Bidder must comply with the requirements of the Sanitary Code of the City of New York and the Rules and Regulations as required by the Department of Health and Mental Hygiene of the City as it pertains to the operation of his business.

Bidder must have adequate facilities for the prompt delivery of any and all items ordered and must have the organization to properly process perishable foodstuffs ordered according to specifications.

SUPPLEMENTARY TERMS AND CONDITIONS
FOR PERISHABLE FOOD STUFFS ONLY
DELIVERY TIME

Commodity	All Delivery Points
Meat Poultry Eggs	Regular Monday to Thursday Inclusive (specified on the order) 6:00 A.M. to 12:00 Noon Replacement Period: Next Day - 6:00 A.M. to 12:00 Noon
Fish	Regular Monday to Friday Inclusive (as ordered) 6:00 A.M. To 12:00 Noon Replacement Period: Next Day - 6:00 A.M. to 12:00 Noon
Milk and Cream, Bread and Rolls	Regular 6:00 A.M. Daily (or earlier if specified) Replacement Period: Next Day - 6:00 A.M. to 12:00 Noon
Fruits and Vegetables, Fresh Quick Frozen	Regular 6:00 A.M. (or as specified) Monday to Friday Inclusive (as requested by institutions) Replacement Period: Optional with institution

Shipment to Railroad Sidings Will Not Be Accepted

Rejection and Replacements

The City will allow one replacement of a rejected delivery providing the delivery had been made within "Regular" delivery time. Deliveries made after the "Regular" delivery time, may be refused.

SPECIFICATION FOR FRUIT, FRESH

Wherever "specified" is used herein, it shall mean "specified in the invitation to bid and the order".

Wherever reference is made herein to any other specification, standard, regulation or method, it shall mean the latest revision thereof in effect at the time of invitation to bid.

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1 INTENT:

1.1 This specification describes Fresh Fruit.

2 APPLICABLE DOCUMENTS:

2.1 The following documents, requirements and regulations are cited:

- United States Department of Agriculture Commodity Specification for Fresh Fruit July 2019 (USDA AMS).
- 7 CFR Part 51: Fresh Fruit shall comply with the requirements of the U.S. Department of Agriculture and the U.S. Regulations and Standards for Inspection, Certification & Grades of Fresh Fruits, Vegetables & Other Products.
- 7 CFR Part 42 §42.130-136: Standards for Condition of Food Containers- On-line sampling and inspection.
- The Fresh Market Fruit USDA AMS U.S. Standards for Grades of:

Apples	Apricots	Florida Avocados
Sweet Cherries	Blueberries	Cantaloupes
Watermelons	Nectarines	Fresh Plums and Prunes
Peaches	Lemons	Florida Grapefruit
Strawberries	Tangerines	Florida Tangerines
Oranges (California and Arizona)		Florida Oranges and Tangelos
Grapefruit (California and Arizona)		
Grapefruit(Texas & States other than Florida, California, Arizona)		
Oranges (Texas & States other than Florida, California, Arizona)		
Winter Pears (such as Anjou, Bosc, Comice, etc.)		
Summer and Fall Pears (such as Bartlett, Hardy, etc.)		
American (Eastern Type) Bunch Grapes		
Table Grapes (European or Vinifera Type)		
Honey Dew and Honey Ball Type Melons		

3 **GENERAL REQUIREMENTS**:

3.1 Fresh Fruit procured under this Commodity Specification must meet the requirements specified in the applicable USDA-AMS United States Standards for Grades of Fresh Fruit.

3.2 All Fresh Fruit must be produced in accordance with the Food and Drug Administration's Current Good Manufacturing Practice in the Manufacturing, Packing, or Holding of Human Food (21 CFR Part 110).

3.3 All Fresh Fruit must be from the current packing season/crop year, unless otherwise specified in the contract. The Fresh Fruit must still have at least 75 percent (75%) of its shelf life remaining at the time of delivery.

3.4 The containers and case markings shall meet the United States Standards for Condition of Food Containers (7 CFR Part 42).

3.5 Fresh Fruit shall be the kinds, varieties, grades and sizes as specified in the contract.

3.6 For products of New York State origin, the vendor must maintain chain of custody written documentation down to the grower level evidencing NYS origin to be provided as per City of New York request.

3.7 If Fresh Fruit is required to be delivered refrigerated, then the refrigerated trailer must be capable of delivering refrigerated shipment at 34° to 40°F.

3.8 When the contract indicates that the Fresh Fruit food commodity must be New York State grown, produced and/or processed, or if the contract specifies Buy American domestic foods then vendor must submit documentation certifying where the Fresh Fruit commodities are produced and/or processed. When the Fresh Fruit is required to be a New York State product, the vendor must ensure that all cases of New York State Fresh Fruit products are labeled as to their NYS sourcing.

4 **QUALITY ASSURANCE PROVISIONS**:

4.1 Test Methods: Analytical Testing of Fresh Fruit shall be made in accordance with the applicable Official Methods of Analysis of the AOAC International. However, other applicable methods of test or examination may be employed if they are satisfactory to the Department of Citywide Administrative Services, or are satisfactory to a laboratory approved by the Commissioner of the Department of Citywide Administrative Services.

4.2 The Fresh Fruit shall be inspected, graded or certified and the count of packages verified.

5 **PACKING AND PACKAGING**:

5.1 All packaging and packing materials must be clean and in new condition, must be of commercial quality, must not impart objectionable odors or flavors to the commodity, must be safe (not adulterated or injurious to health) for use in contact with food products (21 CFR Parts 174-189 FDA Regulation of Indirect Food Additives from Packaging), and must be tamper evident. Tamper evident is defined as packaging and packing materials with one or more barriers to entry which, if breached or missing, can reasonably be expected to provide visible evidence that tampering has occurred.

6 **LABELING REQUIREMENTS**:

6.1 Commercial labeling requirements- as per FDA Food for Human Consumption 21 CFR Part 101 Food Labeling. Commercially labeled packages and shipping containers must be labeled in accordance with USDA Agricultural Marketing Service requirements and the Federal Standards for Condition of Food Containers (7 CFR Part 42) Lot Sampling and Inspection Requirements. Primary and secondary labeling must be approved by USDA AMS and meet FDA guidelines for Food for Human Consumption.

6.2 USDA labeling requirements– USDA assigned plant number, type (variety) and name of the product, date of production, size and net weight of the product must show on each container or bin. Each shipping container must be identified with a Grade Quality Specification printed on the Fresh Fruit shipping container, as is required in the contract. Universal Product bar Code (UPC), symbol and code, must appear on the principal display panel of each shipping container.

7 **DELIVERY**:

7.1 Product shall be delivered in standard containers which must be good commercial fiberboard containers that are acceptable by common or other carrier for safe transport to point of destination, be of such size as to pack the commodity without slack filling or bulging, withstand the stresses of handling, shipping, stacking and storage, and be closed by commercially acceptable methods and materials. Steel or wire straps and staples must not be used for final closure of shipping containers.

APPENDIX

Note 1: In order that each request for contract or purchase order quotations will result in fair competition and delivery of the Fresh Fruit required, the requisition must contain the following information:

(A) **Name of Commodity** – Fruit, Fresh

(B) **Specification Number** – 14-F-14:22A

(C) **Kind** – State the name of fruit

(D) **Type –** State the variety and grade

(E) **Quantity** – State number of pounds

(F) **Delivery** – State point(s) and manner of delivery

Note 2: Copies of this specification may be obtained from:

Department of Citywide Administrative Services
Office of Citywide Procurement
Bureau of Quality Assurance
1 Centre Street - 18th Floor
New York, NY 10007

SPECIFICATION FOR VEGETABLES, FRESH

Wherever "specified" is used herein, it shall mean "specified in the invitation to bid and the order."

Wherever reference is made herein to any other specification, standard, regulation or method, it shall mean the latest revision thereof in effect at the time of invitation to bid.

1. INTENT:

1.1 This specification describes Fresh Vegetables.

2. APPLICABLE DOCUMENTS:

2.1 The following documents, requirements and regulations are cited:

- United States Department of Agriculture Commodity Specification for Fresh Vegetables May 2019 (USDA AMS).
- Fresh Vegetables shall comply with the requirements of the U.S. Department of Agriculture and the United States Regulations and Standards for Inspection, Certification and Grades of Fresh Fruits, Vegetables & Other Products (7 CFR Part 51).
- Code of Federal Regulations Title 7 §42.140 – Standards for Condition of Food Containers- On-line sampling and inspection.
- The Fresh Market Vegetable USDA AMS United States Standards for Grades of the following Fresh Vegetables:

Cabbage	Sweet Potatoes	Cucumbers
Bunched Carrots	Topped Carrots	Lettuce
Potatoes	Garlic	Lima Beans
Snap Beans	Beets	Italian Sprouting Broccoli
Brussel Sprouts	Cauliflower	Sweet Corn
Eggplant	Fresh Asparagus	Kale
Bunched Spinach	Celery	Fresh Tomatoes
Turnips or Rutabagas		
Squash, Fall and Winter Type and Pumpkin		
Onions (other than Bermuda-Granex-Grano and Creole Types)		

3. GENERAL REQUIREMENTS:

3.1 Fresh Vegetables procured under this Commodity Specification must meet the requirements specified in the applicable USDA-AMS United States Standards for Grades of Fresh Vegetables.

3.2 All Fresh Vegetables must be produced in accordance with the Food and Drug Administration's Current Good Manufacturing Practice in Manufacturing, Packing, or Holding of Human Food (21 CFR Part 110).

3.3 All Fresh Vegetables must be from the current packing season/crop year, unless otherwise specified in the contract. The Fresh Vegetables must still have at least 75 percent (75%) of its shelf life remaining at the time of delivery.

3.4 The containers and case markings shall meet the United States Standards for Condition of Food Containers (7 CFR Part 42).

3.5 Fresh Vegetables shall be the kinds, varieties, grades and sizes as specified in the contract.

3.6 For products of New York State origin, the vendor must maintain chain of custody written documentation down to the grower level evidencing NYS origin to be provided as per City of New York request.

3.7 When the bid indicates that the Fresh Vegetables food commodity must be New York State grown, produced and/or processed, or if the bid specifies Buy American domestic foods then vendor must submit documentation certifying where the Fresh Vegetables commodities are produced and/or processed. When the Fresh Vegetables is required to be a New York State product, the vendor must ensure that all cases of New York State Fresh Vegetables product are labeled as to their NYS sourcing.

4. QUALITY ASSURANCE PROVISIONS:

4.1 Test Methods: Analytical Testing of Fresh Vegetables shall be made in accordance with the applicable Official Methods of Analysis of the AOAC International. However, other applicable methods of test or examination may be employed if they are satisfactory to the Department of Citywide Administrative Services, or are satisfactory to a laboratory approved by the Commissioner of the Department of Citywide Administrative Services.

4.2 The Fresh Vegetables shall be inspected, graded, certified; count of packages verified and the results must be evidenced by certificates issued by a USDA Grader. USDA certification shall be provided as per City of New York request.

5. **PACKAGING AND PACKING**:

5.1 All packaging and packing materials must be clean and in new condition, must be of commercial quality, must not impart objectionable odors or flavors to the commodity, must be safe (not adulterated or injurious to health) for use in contact with food products (21 CFR Parts 174-189 FDA regulation of Indirect Food Additives from packaging), and must be tamper evident. Tamper evident is defined as packaging and packing materials with one or more barriers to entry which, if breached or missing, can reasonably be expected to provide visible evidence that tampering has occurred.

6. **LABELING REQUIREMENTS**:

6.1 Commercial labeling requirements- as per FDA Food for Human Consumption 21 CFR Part 101 Food Labeling. Commercially labeled packages and shipping containers must be labeled in accordance with USDA Agricultural Marketing Service requirements and the Federal Standards for Condition of Food Containers (7 CFR Part 42) Lot Sampling and Inspection Requirements. Primary and secondary labeling must be approved by USDA AMS and meet FDA guidelines for Food for Human Consumption.

6.2 USDA labeling requirements– USDA assigned plant number, type (variety)and name of the product, date of production, size and net weight of the product must show on each container or bin. In addition, each shipping container must be identified with a USDA Contract Compliance stamp with certificate number. Universal Product bar Code (UPC), symbol and code, must appear on the principal display panel of each shipping container.

7. **DELIVERY**:

7.1 Product shall be delivered in standard containers which must be good commercial fiberboard construction that is acceptable by common or other carrier for safe transport to point of destination, be of such size as to pack the commodity without slack filling or bulging, withstand the stresses of handling, shipping, stacking and storage, and be closed by commercially acceptable methods and materials. Steel or wire straps and staples must not be used for final closure of shipping containers.

APPENDIX

Note 1: In order that each request for contract or purchase order quotations will result in fair competition and delivery of the Fresh Vegetables required, the requisition must contain the following information:

(A) **Name of Commodity** – Vegetables, Fresh

(B) **Specification Number** – 14-V-10:22A

(C) **Kind** – State the name of the vegetable

(D) **Variety –** State the variety

(E) **Quantity** – State number of pounds

(F) **Delivery** – State point(s) and manner of delivery

Note 2: Copies of this specification may be obtained from:

Department of Citywide Administrative Services
Office of Citywide Procurement
Bureau of Quality Assurance
1 Centre Street - 18th Floor
New York, NY 10007

SPECIAL AUDIT: ITEM C3_06 TOMATOES, CHERRY

The bid items indicated above (the "Special Audit Items") must be sourced from a producer of agricultural goods, such as a farm, grower, or greenhouse (hereinafter "Farm") that, at a minimum, in the sole discretion of the City, substantially complies with the following audit quality mechanisms (collectively, a "Special Audit Program") to effectively investigate and enforce compliance with laws applicable to Farm employees in the relevant jurisdiction, including but not limited to the Fair Labor Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Occupational Safety and Health Act, Title VII of the Civil Rights Act of 1964, and federal laws governing the recruitment of temporary nonimmigrant agricultural (H-2A) workers. Such mechanisms must include, at a minimum:

1. Independent third-party audits. The Special Audit Program conducts annual on-site compliance audits, which must meet the following minimum standards: (a) the Special Audit Program is independent of any financial control or influence by the Farm or the Bidder; (b) investigators have relevant training and/or experience interviewing agricultural workers in the context of wage and hour investigations, health and safety investigations, and/or other similar worker protection legal frameworks, and a sufficient number of the investigators speak English and at least one other language commonly used by the U.S. agricultural workforce; and (c) in conducting an audit, experienced investigators analyze all time and payroll data and interview at least 50% of the Farm's workforce in the worker's preferred language.

2. Enforceable third-party complaint mechanism. The Special Audit Program must operate a complaint hotline that is answered by investigators 24 hours a day, 7 days a week. The investigators must investigate and resolve all complaints in a timely fashion, such that 50% of complaints are resolved within 30 days. Complaint investigation procedures must protect complainants and witnesses from retaliation, and provide enforceable remedies for violations of workers' rights including retaliation should it occur. All outcomes and resolution times must be documented, and the Special Audit Program must publish aggregate data reflecting outcomes and complaint resolution times for all Farms participating in the Special Audit Program, or provide it to the City upon request.

3. Farmworker Education. The Special Audit Program must have a substantive training regime in which workers receive regular, on-site training about their rights, the Special Audit Program's independence, and how they may interact with the Special Audit Program. The Special Audit Program must offer trainers with fluency in each language preferred by at least 5% of the Farm's workforce.

Bidder shall, at the time of bid, and also within 10 days of receiving notice of award, for each Farm from which Bidder plans to source a Special Audit Item, provide proof that is, in the sole discretion of the City, sufficient to show that the Farm is in good standing with an independent Special Audit Program meeting the above requirements. If at any time Bidder sources a Special Audit Item from a different or additional Farm, Bidder shall provide the proof required by this paragraph with respect to the new Farm no later than 30 days prior to delivering any Special Audit Item from such Farm. Bidder shall not be entitled to payment for any Special Audit Item delivered to the City unless Bidder provides such proof for the Farm that produced such Special Audit Item, and such proof are accepted by the City prior to the delivery of such Special Audit Item. Notwithstanding the previous sentence, at the City's sole option, the City may approve payment of Special Audit Items if it receives adequate proof in the form described in this paragraph within 30 days after the delivery of such Special Audit Item. Updated proof required by this paragraph, must be provided annually for each Farm from which Bidder sources Special Audit Items. If Bidder is, at any time it is required, unable to provide the proof required by this paragraph, as to a particular Farm, the City may, at its sole option, excuse such requirement, if the City determines that the Bidder's failure to provide the required proof was due to a failure outside the Bidder's control, and that the Farm from which Bidder sourced the Special Audit Item was in good standing with a Special Audit Program as required herein at the time of delivery.

Notwithstanding the foregoing, Bidder may request a waiver of the above requirements, in whole or in part, in accordance with the specification waiver request procedure set forth in the New York City Purchase Contract, Part I. All requests for a waiver of these requirements must contain supporting documentation sufficient to show, in the sole discretion of the City, that 1) a substitute product otherwise meeting the requirements of this specification is not available; or 2) each available substitute product meeting the requirements of this specification is only available subject to significant commercial impediment, such as commercially unreasonable freight costs. If granted, such waiver shall be effective only for so long as, and to the extent the City determines that, the circumstances warranting the waiver persist; in no event shall such waiver extend past the term of the awarded contract. As soon as a substitute product meeting the requirements of this specification becomes available or the significant commercial impediment ceases to exist, Bidder shall notify the City and offer the substitute product or resume sourcing the original product meeting the above requirements. Nothing herein shall be construed as limiting or precluding Bidder from making a request for a product substitution or a request for a price adjustment in accordance with the procedures set forth in the New York City Purchase Contract, Part I.

Appendix A

Mayor's Office of Food Policy

Mayor's Office of Contract Services

New York State Food Purchasing Guidelines

The City of New York strives to provide clients with healthy, fresh and delicious food that is sustainably produced and transported. Accordingly, where practicable, City agencies should afford a preference to New York State food products[1] in their purchasing decisions.

Information and resources concerning sourcing products from New York State, and from the larger region, may be viewed at: https://home.nyc.gov/site/mocs/regulations/food-policy-standards.page.

Required Solicitation Language

These guidelines shall apply to any solicitation valued at more than $100,000 for food or food-related services (e.g., catering), and to any solicitation for social services through which more than $100,000 of food would be purchased annually in fulfillment of the contract.[2]

Any such solicitation must include a copy of these guidelines, along with the list of New York State food products promulgated by the NYS Department of Agriculture and Markets (hereinafter "NYSDA list", available at: https://home.nyc.gov/assets/mocs/downloads/Regulations/food-policy-standards/NYSFoodList.pdf.

Crafting Solicitations

Under New York State General Municipal Law (GML) §103, City agencies have a number of procurement tools to increase their options for purchasing New York State food products. For any direct purchase of food products covered by this option, pursuant to City Charter §329(b), the Department of Citywide Administrative Services (DCAS) or the Department of Education's Division of Contracts and Purchasing (DCP) would be the purchaser. For food-related services, such as catering or meal delivery services, City agencies could be the purchasers. These tools include the following:

a) Under Subsection (8)(a) of GML §103, the purchasing agency may mandate that a particular product, e.g., apples, come from New York State, thereby limiting competition to bidders that can supply such products, rather than similar products sourced from other locations.

b) In addition to the above-described bid solicitation term that specifically prefers New York State food products, purchasing agencies may use the new "best value" provisions of GML §103 to craft solicitations that consider the quality and efficiency of the

[1] For the purposes of these guidelines, "New York State food products" shall mean food products whose essential components are grown, produced or harvested in New York State, or food products where any processing of such food products took place in facilities located within New York State, and which are included in the list of such products promulgated by the NYS Department of Agriculture and Markets.
[2] This requirement does not apply to emergency procurements.

food being purchased, such as whether the product is being grown, processed, or distributed by a New York State vendor.

c) For City agencies that procure human services contracts that include (as part of their scopes of work) the provision of food products, the solicitations for those programs may incorporate requirements applicable to such provision of food products, along the lines described above in a) and b). Service providers responding to such solicitations may be evaluated with regard to their experience, organizational capability and/or approach to ensuring the appropriate use of New York State food products in their programs.

Where a New York State food product sourcing requirement is a material term of the contract, agencies may require vendors to submit reports detailing the source of the food provided and/or require vendors to ensure that all cases of New York State food products are labeled as such.

Considerations for Purchasing

In furtherance of the above policy to encourage New York State food product purchasing, agencies are encouraged to review their current "menu" to identify areas where a currently procured product might be replaced with an alternative product available from New York State. New York State is a leading producer of many products including dairy, beef, apples, cabbage, onions, grapes, cherries and peaches. For instance, City agencies may consider replacing oranges (which are not available from New York State producers) with apples.

In some instances, where current marketplace offerings have failed to meet existing needs, the City has successfully used its market leverage to work with providers to develop new products, such as low- sodium canned beets and pre-sliced apples. Agencies are encouraged to contact the Mayor's Office of Contract Services and the Mayor's Office of Food Policy for assistance.

Consumer food preference is a rapidly changing area. City agencies are encouraged to communicate regularly with their clients about client food preferences, including preferences regarding food sourcing.

Requesting Sourcing Information

For any contract covered by these guidelines, agencies must request from their vendors sourcing information for the food products provided under the contract. In particular, agencies must request that vendors:

1) Review the NYSDA list and the various products' respective periods of availability.

2) Submit to the contracting agency a report detailing:

a. Whether any of the types of items on the NYSDA list were provided under the contract

b. The dollar value of any such items that were produced or processed in New York State

c. The dollar value of any such items that were not produced or processed in New York State, and that were provided during the relevant New York State availability periods

d. The dollar value of any such items that were not produced or processed in New York State availability period

To facilitate this process, MOCS will distribute to agencies detailed instructions, including a data template and sample instructions for vendors. Vendors providing social services may not initially have the information as to where the food served to their clients was produced or processed. Agencies will need to work with those service providers to ensure that they ask their distributors or other food suppliers to provide such information, so that the social services providers may report this information to their contracting agencies.

The information collected by MOCS will be used to compile a report, submitted to the Mayor and the Speaker of the City Council, that will include sourcing information on the food purchased by City agencies and a list of vendors who provided such information to the City. For past reports, see: https://www.nyc.gov/site/mocs/regulations/food-policy-standards.page.

In addition to the Local Law 50 of 2011 reporting requirement, the Mayor's Office of Food Policy (MOFP) collects all food purchasing data from agencies and their subcontractors through the Good Food Purchasing initiative, established by Executive Order 8 of 2022. MOFP will distribute to agencies detailed instructions, including a data template and sample instructions for vendors. For additional information on the Good Food Purchasing initiative, visit: https://www.nyc.gov/site/foodpolicy/good-food-purchasing/good-food-purchasing.page.

New York State Foods Reference List
(Revised May 2007)
Promulgated Pursuant to Section 165(4) of the State Finance Law and Section 103(8-a) of the General Municipal Law

New York State Department of Agriculture and Markets

Fresh Fruits and Vegetables

This list represents the approximate time of availability for New York State fruits and vegetables. This list is not intended to indicate relative volumes available.

Fruits	**Availability**		
Apples	July 15	-	May
Cherries (sweet)	June 15	-	July 15
Cherries (sour)	July 15	-	August 15
Grapes	August 15	-	October
Melons	August	-	October
Peaches	July 15	-	September 15
Pears	August 15	-	November
Plums	September 15	-	October
Strawberries	June	-	July15

Vegetables

Asparagus	May 15	-	June 15
Beans	July	-	October 15
Beets	June 15	-	November
Bok Choy	August	-	October
Broccoli	June	-	October
Brussels Sprouts	August	-	November
Cabbage	June	-	February
Carrots	July	-	April
Cauliflower	July	-	December 15
Celery	July 15	-	November 15
Corn	July 15	-	October 15
Cucumbers	July 15	-	October 15
Eggplant	July 15	-	October 15
Garlic	August	-	April
Greens (Swiss Chard, Kale)	July	-	October
Leeks	July	-	October
Lettuce	May	-	October
Onions	Jul;y	-	April
Peas	June	-	July
Peppers	July 15	-	October 15

Potatoes	July	-	April
Pumpkins	September 15	-	October
Spinach	June 15	-	October 15
Squash (summer)	July 15	-	October 15
Squash (winter)	September	-	March
Sweet Potatoes	August	-	November
Tomatoes	July 15	-	October 15
Turnips	July 15	-	March

Field Crops Generally available year round.

Barley
Buck Wheat
Oats
Soybeans
Wheat

Processed Foods

The following is a listing of processed foods available from New York State vendors. Many of these products are available year round. Volumes must be determined on a case by case basis.

01 – Soft Drinks, Water
02 – Beverage Bases
03 – Coffee, Tea, Cappuccino
04 – Alcoholic Beverages
05 – Bread, Rolls, Buns, Sweet Goods
06 – Custard, Cream-Filled Sweet Goods
07 – Macaroni, Noodle Products
08 – Breakfast Cereals, Ready-to-Eat
09 – Whole Grains, Beans-Bulk
10 – Pretzels, Chips, Specialty Items
12 – Proc. Grain, Starch Prods.-Human
12 – Prep. Mixes, Dry Flour/Meal Base
13 – Candy, Gum, Choc., Cocoa Products
14 – Honey, Syrup, Sugar
15 – Butter, Butter Products
16 – Cheese, Cheese Products
17 – Milk, Milk Products
18 – Dried Milk, Dried Milk Products
19 – Ice Cream, Related Products
20 – Eggs, Egg Products
21 – Fish, Fish Products (not smoked)
22 – Shellfish, Crustaceans, Etc.
23 – Smoked Fish
24 – Spices, Salt
25 – Extracts, Flavors
26 – Dressing, Condiments
27 – Fresh Fruits, Juices (except apple cider)
28 – Frozen Fruits, Juices
29 – Canned Fruits, Concentrates, Nectars
30 – Dried Fruits
31 – Jams, Jellies, Preserves, Butter
32 – Fruit Products
35 – Meat, Meat Products
36 – Nuts, Nut Products
37 – Veg. Oil Seed, Oil Stock, Crude Oil
38 – Ref. Veg. Oil, Shortening, Oleo
39 – Fresh Vegetables
40 – Frozen Vegetables, Veg. Juices
41 – Canned Vegetables, Veg. Juices
42 – Dried, Dehydrated Vegetables

43 – Cured, Proc. Vegetable Prods.
44 – Dry Dessert, Pudding Mixes
45 – Prepared Multiple Foods
48 – Food Chemicals
49 – Infant, Jr., Geriatric Foods
50 – Dietary Specialties, Artificial Sweeteners
52 – Soy Products
53 – Apple Cider
65 – Maple Syrup

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2011

No. 50

Introduced by Council Members Brewer, Cabrera, Foster, James, Lander, Palma, Rodriguez, Rose, Williams, Levin, Chin, Van Bramer, Lappin, Recchia, Vallone, Crowley, Mark-Viverito, Garodnick, Gonzalez, Weprin, Koppell, Wills, Jackson, Gennaro, Barron and Ulrich

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the purchase of New York state food.

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title six of the administrative code of the city of New York is amended by adding a new section 6-130 to read as follows:

§ 6-130. New York state food purchased by city agencies. a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) "Agency" shall mean a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "City chief procurement officer" shall mean the person to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement.

(3) "Food products" shall mean the types of fresh fruits, vegetables and field crops

identified on the list promulgated by the New York state commissioner of agriculture and markets pursuant to subdivision eight-a of New York general municipal law section one hundred three.

(4) "Food purchase contract" shall mean any contract entered into by an agency for the direct purchase of food products or processed food.

(5) "Food-related services contract" shall mean any contract for services entered into by an agency, that includes the provision of food products or processed food.

(6) "New York state food products" shall mean food products whose essential components are grown, produced or harvested in New York state, and processed food that is processed in facilities located within New York state.

(7) "Processed food" shall mean the types of foods that have been altered from their natural state, using methods including, but not limited to, canning, freezing, cooking, mixing, chopping, refrigeration, dehydration, liquefaction, and emulsification identified on the list promulgated by the New York state commissioner of agriculture and markets pursuant to subdivision eight-a of New York general municipal law section one hundred three.

b. The city chief procurement officer shall encourage agencies to make best efforts to purchase New York state food in ways including, but not limited to:

(1) within one hundred eighty days of the effective date of the local law that added this section, establishing guidelines for agencies that will assist in increasing the purchase of New York state food products, pursuant to the process set forth in subdivision eight-a of New York general municipal law section one hundred three, applicable to both food purchase contracts and food-related services contracts;

(2) publishing such New York state food products purchasing guidelines on the mayor's office of contract services website, disseminating such guidelines to agencies and training agency

contracting personnel on implementing such guidelines; and

(3) monitoring agency implementation of such guidelines.

c. Within one hundred eighty days of the effective date of the local law that added this section, the commissioner of the department of citywide administrative services, with respect to food purchase contracts, and the city chief procurement officer, with respect to food-related services contracts, shall ensure that the city guidelines and the listing of New York state food products promulgated by the New York state commissioner of markets and agriculture pursuant to subdivision eight-a of New York general municipal law section one hundred three are made a part of each solicitation for all such contracts and shall request that each vendor supplying food products or processed food under a contract issued as a result of such solicitations:

(1) review the list of New York state food products to determine whether any such products are being provided under such contract(s);

(2) report to the procuring agency all of the food products and processed food procured under such contract(s), categorized by specific type, together with the dollar value of each such type procured under such contract(s), to the extent practicable and known to such vendor; and

(3) for each such type of food product or processed food included on the listing of New York state food products, report to the procuring agency, to the extent practicable and known to such vendor: (a) any such New York state food product procured under such contract(s), together with the dollar value of each such type procured under such contract(s); (b) any such food product from outside of New York state procured under such contract(s) during its listed New York state availability period, together with the dollar value of each such type procured under such contract(s); and (c) any other such food product from outside of New York state or processed food from facilities outside of New York state procured under such contract(s) from outside New York

state, together with the dollar value of each such type procured under such contract(s).

d. The city chief procurement officer shall collect the information provided by vendors pursuant to subdivision c of this section.

e. This section shall not be construed as requiring that the guidelines developed pursuant to this section require the purchase of more costly food products or processed food, or that such guidelines be made applicable to: (1) emergency procurements pursuant to section three hundred fifteen of the charter; (2) food purchases in dollar amounts less than the small purchase limits set forth in section three hundred fourteen of the charter; or (3) food procured from vendors in partial fulfillment of larger contracts for social services, where food is purchased in dollar amounts totaling annually less than the small purchase limits set forth in section three hundred fourteen of the charter.

f. Nothing in this section shall be construed to limit the city's authority to enter into, cancel or terminate a contract, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a contractor city business.

g. Not later than October first of each year, the city chief procurement officer shall submit to the mayor and the speaker of the city council, and publish on the mayor's office of contract services website, a report detailing the city's efforts during the preceding fiscal year to implement the city guidelines for the purchase of New York state food, adopted pursuant to subdivision eight-a of New York general municipal law section one hundred three. Such report shall include, at minimum:

(1). a description of the city's efforts to improve and increase the tracking of information relating to New York state food procured by agencies;

(2) a list of vendors that provided information pursuant to subdivision c of this section, in

connection with covered solicitations; and

(3) the information collected pursuant to paragraph three of subdivision c of this section, compiled to provide the following, disaggregated by food product and processed food: (a) the total dollar value of New York state food products procured by agencies; (b) the total dollar value of food products from outside of New York state procured by agencies during their listed New York state availability periods; and (c) the total dollar value of all other food products from outside of New York state and processed food from facilities outside of New York state.

§2. This local law shall take effect 90 days after its enactment into law, provided, however, that city agencies, officers and employees, including but not limited to the city chief procurement officer, shall take such actions as are necessary for its implementation prior to such effective date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on ……July 28, 2011…………. and approved by the Mayor on ……August 17, 2011…………

MICHAEL M. McSWEENEY, City Clerk Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27
Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 50 of 2011, Council Int. No. 452-A) contains the correct text and was passed by the New York City Council on July 28, 2011 approved by the Mayor on August 17, 2011 and returned to the City Clerk on August 17, 2011.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.

Appendix B

New York City Food Standards | **Meals and Snacks Purchased and Served**

This document outlines standards for food and beverages purchased and meals and snacks served by City agencies and their contractors, with the goal of improving the health of New Yorkers. The NYC Food Standards (the Standards) aim to reduce the prevalence of chronic disease, such as diabetes and cardiovascular disease, by increasing access to healthy foods and improving dietary intake. The Standards help to combat some of the structural inequities that make healthy eating inaccessible by ensuring that any New Yorker accessing meals or snacks from City agencies and their contractors will be served more nutritious foods. The Standards promote a just and equitable food system that supports local and regional economies while minimizing harmful environmental impacts, in alignment with long-term public health goals.

The Standards were first made effective by an Executive Order in 2008 and were reaffirmed by Executive Order 8, signed on February 10, 2022.[1] Executive Order 8 also committed NYC to the Good Food Purchasing initiative.[2] There are a total of six sets of Standards that address different settings where food is served, including NYC government agency meal programs, food vending machines, beverage vending machines, meetings and events, correctional facility commissaries, and retail cafeterias and cafes.[3] The Standards for Meals and Snacks Purchased and Served, which are required by Executive Order to be reviewed and revised every three years, were revised in August 2025. Updates were previously made in 2011, 2014, 2017, and 2022.

Agencies and their contractors are required to follow the standards described in each of the three sections:

Section 1. Standards for Purchased Food
Addresses food items purchased and provides specific standards by food category.

Section 2. Standards for Meals and Snacks Served
Addresses the overall nutrient requirements for meals and provides standards for snacks and special occasions.

Section 3. Agency- and Population-Specific Standards and Exceptions
Addresses standards for specific populations (for example, adults in custody) and agencies. The additions and exceptions in this section supersede the standards in the first two sections.

The first two sections overlap: All purchased food items must meet the standards in Section 1 and be incorporated into meals or snacks that meet the nutrient requirements in Section 2. The two sections work together to provide healthier meals to New Yorkers who use or rely on City food programs.

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[1] View the Executive Order at **nyc.gov/assets/home/downloads/pdf/executive-orders/2022/eo-8.pdf**.

[2] View the initiative at **nyc.gov/site/foodpolicy/good-food-purchasing/good-food-purchasing.page**.

[3] View all sets of the NYC Food Standards at **nyc.gov/healthyworkplaces**.

NYC Health

The Standards were developed based on each City agency's feedback, review, and agreement. All food purchased and served by a City agency must meet the **required** standards that appear in bold. Agencies are expected to be in compliance with the revised Standards by July 1, 2026. Agency contractors are also required to comply with these Standards. This includes food service contractors, such as caterers, and programmatic contractors that serve food within the context of the program. These Standards do not apply to concessions that provide food for sale through leases, licenses, or contracts at City programs.

For more information, contact **nycfoodstandards@health.nyc.gov**.

Section 1. Standards for Purchased Food

The following standards apply to all purchased food and beverages.

A. Ingredient Requirements

Ingredient restrictions are based on an ingredient appearing on a product's ingredient list.

- **Require** all foods and beverages purchased do not contain:

Low- or no-calorie sweeteners Includes: acesulfame potassium, advantame, allulose, aspartame, brazzein, monatin, monk fruit (also known as luo han guo), neotame, polydextrose, rebauside, rebaudioside, steviosides, stevia, saccharin, sucralose, and sugar alcohols (glycerol, mannitol, sorbitol, xylitol, erythritol, and Lycasin and Palatinit)
Artificial colors Includes: Artificial Color, FD&C Blue No. 1, FD&C Blue No. 2, caramel color, Citrus Red No. 2, FD&C Green No. 3, Orange B, FD&C Red No. 40, titanium dioxide, FD&C Yellow No. 5, and FD&C Yellow No. 6
Flour additives Azodicarbonamide, potassium bromate, and potassium iodate
Preservatives Butylated hydroxyanisole (BHA) and propylparaben
Ingredients prohibited by the FDA[4] Includes: brominated vegetable oil, partially hydrogenated oil, FD&C Red No. 3, and sodium cyclamate

- Recommend agencies adopt a policy for allergens appropriate to their population's needs.

[4] Restriction is consistent with federal law. For more information, visit **federalregister.gov**.

B. Nutrient Requirements

These standards are defined per serving of food as shown on a product's Nutrition Facts label, unless otherwise specified.[5]

Sodium

- **Require** all items (for example, tomato sauce, veggie burgers, breaded chicken, frozen French toast, waffles) contain less than or equal to (≤) 480 milligrams (mg) of sodium per serving, unless a lower standard is specified in the Food Category Requirements below.
- Recommend "low-sodium" items (≤ 140 mg of sodium per serving).
- **Require** for programs serving primarily children age 4 and younger, all items contain ≤ 420 mg of sodium per serving, unless a lower standard is specified in the Food Category Requirements below.

C. Food Category Requirements

The following applies to specific categories of purchased foods. These requirements apply to items that City agencies choose to purchase. City agencies are not required to purchase food or beverages from the categories outlined below.

- Recommend no food products that are preprepared by deep-frying. This includes potato tots and prefried breaded products such as chicken nuggets, chicken patties, mozzarella sticks, and fish sticks.
- Recommend products that are grown by producers using low amounts of or no pesticides, or an integrated pest management system.
- Recommend foods produced using regenerative agricultural practices.
- Recommend animal products are produced without the use of antimicrobial drugs for disease prevention purposes.

Beverages

- **Require** all beverages contain no added sweeteners, unless a different standard is specified in the milk and soy milk category below.[6]
- **Require** fruit juice be 100% with no added sweeteners.[6]

Milk and soy milk

- **Require** for people age 2 years and older, only 1% or nonfat milk with no added sweeteners.[6,7]
- **Require** for children ages 12 months up to 2 years, only whole milk with no added sweeteners.[6]
- **Require** fluid milk substitute is fortified soy milk with ≤ 5 grams (g) of added sugar per serving. Soy milk must be fortified with calcium, vitamin A, and vitamin D.[8,9]

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[5] Serving size is based on the FDA established lists of "Reference Amounts Customarily Consumed per Eating Occasion."

[6] Sweeteners include added sugars and low- and no-calorie sweeteners.

[7] Unless milk with a higher fat content is medically required as documented by a child's medical provider.

[8] Other nondairy fluid milk besides fortified soy milk is not nutritionally equivalent to fluid milk.

[9] Programs regulated by Article 47 of the NYC Health Code or participating in the Child and Adult Care Food Program (CACFP) should follow any nutrition guidelines for soy milk in those regulations.

- **Require** for children ages 5 to 18 years, if served, flavored milk or flavored soy milk contain ≤ 10 g of added sugar per serving.
- Recommend, if served, flavored milk or flavored soy milk contain ≤ 8 g of added sugar per serving.
- Recommend agencies set a timeline for phasing out flavored milk and flavored soy milk.

Dairy

- **Require** cheese contain ≤ 290 mg of sodium per serving.[10]
- **Require** low-fat or nonfat yogurt that is plain (unflavored) or contains ≤ 7 g of added sugar per 4 oz or equivalent.
- **Require** for programs serving primarily children ages 2 to 4 years, low-fat or nonfat yogurt that is plain (unflavored) or contains ≤ 3 g of added sugar per 4 oz or equivalent.
- Recommend serving only plain (unflavored) yogurt and phasing out sweetened yogurt.

Bread and other grains

- **Require** all breads and other grains (for example, dinner rolls, bagels, tortillas, breakfast breads, pancakes, waffles, muffins, pastries, cakes, cookies) served as part of meal service (breakfast, lunch, or dinner):
  - Contain ≤ 10 g of added sugar per serving.
  - Contain ≤ 290 mg of sodium per serving.
- See separate standards for sliced sandwich bread, cereal, and snacks below.
- **Require** sliced sandwich bread:
  - Contain ≤ 180 mg of sodium per serving.
  - Be whole wheat or whole grain.[11]
  - Contain greater than or equal to (≥) 2 g of fiber per serving.
- Recommend all grains be whole grain[11] (for example, brown rice and whole-wheat pasta, dinner rolls, muffins, bagels, and tortillas).

Cereal

- **Require** cereal:
  - Contain ≤ 200 mg of sodium per serving.
  - Contain ≤ 6 g of added sugar per serving.
  - Contain ≥ 2 g of fiber per serving.
  - Be whole grain.[11]

[10] Cottage cheese is exempt due to lack of market availability for products that meet this standard.

[11] A product must have a whole grain first on its ingredient list to be considered whole grain. For more information on whole grains, visit **wholegrainscouncil.org**.

Snacks

- **Require** all potato- and grain-based items served as snacks (for example, chips, crackers, granola bars, muffins, cookies):
  - Contain ≤ 200 mg of sodium per serving.
  - Contain ≤ 10 g of added sugar per serving.
  - Contain ≥ 2 g of fiber per serving.

Fruits and vegetables

- **Require** canned and frozen vegetables contain ≤ 220 mg of sodium per serving.
- **Require** canned and frozen beans contain ≤ 290 mg of sodium per serving.
- **Require** canned fruit is in 100% fruit juice or water with no added sweeteners.[6]

Seafood, poultry, and meat

- **Require** canned and frozen seafood and poultry contain ≤ 290 mg of sodium per serving.
- **Require** no processed meat.[12]
- Recommend seafood purchased be from sustainable fisheries and stocks.
- Recommend ground beef and pork be lean (≥ 90% lean) or extra lean (total fat ≤ 5%).

Condiments and salad dressings

- **Require** salad dressings contain ≤ 290 mg of sodium per serving.
- **Require** soy sauce with "less" or "reduced" sodium.[13]

Frozen whole meals

- **Require** frozen whole meals contain ≤ 35% of the Chronic Disease Risk Reduction threshold for sodium (children 2 to 3 years: ≤ 420 mg of sodium; children 4 to 8 years: ≤ 525 mg of sodium; children 9 to 13 years: ≤ 630 mg of sodium; children 14 to 18 years and adults of all ages: ≤ 805 mg of sodium).[14]

Note regarding Standards for Purchased Food: If an agency or their contractor is unable to meet the updated standards due to contract cycle limitations or technical challenges related to reformulation at the manufacturer's level, agencies must submit a list of items out of compliance, steps taken to achieve compliance, and an expected timeline for full compliance to the Mayor's Office of Food Policy and the New York City Department of Health and Mental Hygiene (NYC Health Department) on or before July 1, 2026.

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[12] Meat that has been transformed to enhance flavor or improve preservation by curing (to add salt, sugar, or any source of nitrates or nitrites, including those listed in CFR Title 21 Subpart B, celery-based products, wine, Swiss chard-based products, lactic acid starter culture, cherry-based products, vegetable juice powder, or rosemary extract to meat for color development, flavor enhancement, preservation, or safety), fermentation (to add fermentative bacteria to meat to add flavor or stop the growth of harmful organisms), salting (to preserve meat with sodium), or smoking (to expose meat to smoke from burning wood or apply liquid smoke ingredients to meat). Adapted from the World Health Organization: **who.int/news-room/questions-and-answers/item/cancer-carcinogenicity-of-the-consumption-of-red-meat-and-processed-meat**.

[13] Soy sauce is exempt from the sodium standard due to lack of market availability for products that meet this standard.

[14] Chronic Disease Risk Reduction levels are based on the National Academies of Science, Engineering, and Medicine's Dietary Reference Intakes for Sodium and Potassium at **nap.nationalacademies.org/resource/25353/030519DRISodiumPotassium.pdf**.

Section 2. Standards for Meals and Snacks Served

This section applies to all meals and snacks that are served.[15] All City agencies must have a plan for regular menu review to make sure that they meet the standards in Parts B and C.

A. Food Preparation and Service

- **Require** no deep-frying.
- **Require** all new or renovated kitchens be built without deep fryers.
- **Require** that sites solicit client feedback annually regarding meals and snacks and consider results as part of their menu-planning process. Sites must solicit client feedback regarding cultural preferences, taste, and food quality using the required questions provided by the Mayor's Office of Food Policy and the NYC Health Department.
- **Require** condiments regularly served with a meal (for example, syrup with pancakes) are listed on the menu and included in the nutrient analysis.
- Recommend whole foods (unprocessed) or foods that are minimally processed when possible.[16]
- Recommend focusing on seasonal and locally sourced foods when developing menus.
- Recommend cooking from scratch whenever possible.
- Recommend increasing unsaturated plant oils (for example, olive oil, canola oil, corn oil, sunflower oil) and minimizing saturated animal fats and plant oils (for example, butter, coconut oil, palm oil).
- Recommend prioritizing culinary training for cooks and food service staff.

B. Meals Served

1. Nutrient Requirements

For sites serving three meals per day:

- **Require** three meals combined meet the following daily standards[17]:

	People age 14 and older	Children ages 9 to 13	Children ages 4 to 8	Children ages 2 to 3
Calories*	2,000	1,600 to 1,800	1,200 to 1,400	900 to 1,100
Sodium	≤ 2,300 mg	≤ 1,800 mg	≤ 1,500 mg	≤ 1,200 mg
Saturated fat	< 10% of total calories	< 10% of total calories	< 10% of total calories	< 10% of total calories
Fiber	≥ 28 g	≥ 24 g	≥ 19 g	≥ 14 g
Added sugar	< 10% of total calories	< 10% of total calories	< 10% of total calories	< 10% of total calories

***Require** daily calories are no more than 10% above or below the standard.

[15] See Page 12 for population-specific exceptions.

[16] Whole foods are unprocessed foods that are edible parts of plants or animals after separation from nature. Minimally processed foods are unprocessed, or whole foods, altered by industrial processes such as the removal of inedible parts to extend shelf life but that do not add or introduce any new substance (such as fats, sugars, or salt). Examples include milk, frozen fruits and vegetables, nuts, and whole grains. (Definitions adapted from NOVA, a food classification system.)

[17] Standards are based on the United States Department of Agriculture (USDA) 2020-2025 Dietary Guidelines for Americans: **dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf**.

For sites serving only one or two meals per day:

Breakfast

	People age 14 and older	Children ages 9 to 13	Children ages 4 to 8	Children ages 2 to 3
Calories	450 to 660	400 to 540	300 to 420	225 to 330
Sodium	≤ 690 mg	≤ 540 mg	≤ 450 mg	≤ 360 mg
Saturated fat	< 10% of total calories	< 10% of total calories	< 10% of total calories	< 10% of total calories
Fiber	≥ 7 g	≥ 6 g	≥ 5 g	≥ 4 g
Added sugar	< 10% of total calories	< 10% of total calories	< 10% of total calories	< 10% of total calories

Lunch or dinner

	People age 14 and older	Children ages 9 to 13	Children ages 4 to 8	Children ages 2 to 3
Calories	540 to 770	480 to 630	360 to 490	270 to 385
Sodium	≤ 805 mg	≤ 630 mg	≤ 525 mg	≤ 420 mg
Saturated fat	< 10% of total calories	< 10% of total calories	< 10% of total calories	< 10% of total calories
Fiber	≥ 8 g	≥ 8 g	≥ 6 g	≥ 4 g
Added sugar	< 10% of total calories	< 10% of total calories	< 10% of total calories	< 10% of total calories

Participants in the federal School Breakfast Program and National School Lunch Program may adhere to the calorie requirements provided by that program.

- Recommend agencies follow the National Academies of Sciences, Engineering, and Medicine's Dietary Reference Intakes appropriate for their population for all other nutrients.[18]

Exemption
A contracted agency program may apply for an exemption from the above Nutrient Requirements if it meets **all** the following requirements:

- Meals are prepared on-site or by a program that serves a similar population to the program seeking the exemption (for example, a day care center that prepares food for a second location operated by the same organization). Meals purchased from vendors are not exempt.
- Program does not have access to a nutritionist (City agency-employed, consultant, or contractor) for regular menu review.
- Program regularly serves fewer than 200 people per meal.
- Program is not part of a larger contract for food purchasing coordinated by a City agency.

[18] National Institutes of Health nutrient recommendations and databases available at **ods.od.nih.gov/healthinformation/nutrientrecommendations.aspx#dv**.

Exempt programs should strive to meet these Nutrient Requirements through thoughtful menu planning. Should exemption be granted, programs must still comply with all other requirements of the NYC Food Standards.

2. Meal Requirements

The following applies to specific categories of foods for agencies serving meals to adults and children.

Fruits and vegetables

- **Require** at least 1 serving of fruit per day.[19] 100% fruit juice does not count toward this requirement.
- **Require** for sites serving three meals per day:
  - 5 or more servings of fruits and vegetables per day.[19]
  - At least 2 servings[19] of vegetables per day are dark green, red, or orange, or other nonstarchy vegetables.[20]
- **Require** for sites serving one to two meals per day:
  - 2 or more servings of fruits and vegetables at lunch and at dinner.[19]
  - At least 1 serving[19] of vegetables per day is dark green, red, or orange, or other nonstarchy vegetables.[20]
- Recommend:
  - 2 or more servings of fruits and vegetables at breakfast.[19]
  - Fresh or frozen fruits and vegetables are served instead of canned.
  - At least 1 to 2 servings of dark green vegetables per week.[20]
  - Red and orange vegetables served on most days of the week (6 servings per week if serving 3 meals per day).[20]

Grains

- **Require** at least half of all grains served[21] are whole grains (for example, brown rice and whole-wheat pasta, dinner rolls, bagels, and tortillas).[11]
- **Require** all cereal and sliced sandwich bread served are whole grain.[11]
- Recommend all grains served are whole grain.[11]

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[19] One serving of fruit or vegetable for adults is equal to a cup- or oz-equivalent as defined by the USDA. For detailed descriptions of fruit and vegetable cup equivalents, visit **myplate.gov/eathealthy/vegetables** (see "cup of vegetable table") and **myplate.gov/eathealthy/fruits** (see "cup of fruit table").

If serving children age 13 years and younger, a serving of fruits and/or vegetables is equal to:
- Ages 2 to 3 years (child care): 1/2 cup-equivalent
- Ages 4 to 13 years (pre-K, elementary, and middle school): 3/4 cup-equivalent

[20] Dark green vegetables include broccoli, spinach, romaine lettuce, collards, bok choy, and kale.
Red and orange vegetables include tomatoes, carrots, sweet potatoes, red peppers, winter squash, and pumpkin.
Other nonstarchy vegetables include yellow squash, seaweed, okra, eggplant, cucumbers, cabbage, cauliflower, daikon, chayote, and bitter melon.
Starchy vegetables include potatoes, corn, green peas, lima beans, plantains, and cassava.

[21] Serving is defined by an item appearing on the menu.

Protein foods

Plant protein

- **Require** 2 or more servings[21] of whole or minimally processed plant proteins[22] at lunch and at dinner per week.
  - At least 1 serving[21] per meal type[23] must be the primary protein.[24-26]
  - 1 serving[21] per meal type[23] may be a primary protein, mixed entree, or side dish.
- Recommend a serving[21] of plant protein be a minimum of 3 oz-equivalents.[26]
- Recommend at least 1 serving[21] of whole or minimally processed plant protein at breakfast per week.
- Recommend a whole or minimally processed plant protein option is available at all meals.

Beef and other ruminant meats

- **Require** for sites serving three meals per day, no more than 2 servings[21] of beef or ruminant meats per week.[23]
- **Require** for sites serving one to two meals per day, no more than 1 serving[21] of beef or ruminant meat per week per meal type.[23]
- Recommend phasing out beef and ruminant meats completely from all meals.

Processed meat

- **Require** processed meat is not served.[12]

Seafood

- Recommend 1 to 2 servings[21] of seafood per week with at least one of those servings being fish that contains heart-healthy oils (for example, tuna, salmon).
- Recommend seafood purchased be from sustainable fisheries and stocks.

Dairy

- Recommend serving[21] cheese as the primary protein[24] no more than once per week per meal type.[23]

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[22] Whole plant proteins include kidney beans, pinto beans, white beans, black beans, pink beans, mung beans, soybeans, chickpeas, black-eyed peas, pigeon peas, split peas, lentils, nuts, and seeds.

Minimally processed plant proteins include tofu, tempeh, seitan, falafel, hummus, bean spread, plant protein pasta, and some veggie burgers and plant-based meat alternatives.

Note: Green beans and green peas are not considered plant proteins.

[23] Meal type refers to the type of meal being served (for example, breakfast, lunch, or dinner).

[24] A primary protein is the largest protein item by weight or oz-equivalent. For example, beans would be the primary protein in an entree with 2 oz of beans and < 2 oz of cheese.

[25] To meet this requirement, a meal must include a whole plant protein or an item that lists a whole plant protein or flour made from whole plant protein as the first or second ingredient on the ingredient list.

[26] For more detailed information, see the Ounce-Equivalent of Protein Foods Table at **myplate4chatbot.stg.platform.usda.gov/eat-healthy/protein-foods**.

Beverages

All beverages served must meet the Standards for Purchased Food in Section 1.

- **Require** serving water at all meals (this can be in addition to or in place of other beverages regularly served). Recommend tap water whenever possible.
- **Require** 100% juice, if served, be:
  - Limited to ≤ 6 oz per serving for programs serving children age 5 and older
  - Limited to ≤ 4 oz per serving for programs serving children ages 3 to 4 years
  - Not served to children age 2 and younger
  - Served no more than once per day if providing meals
- Recommend phasing out juice completely.

C. Snack Standards

Snacks should add important nutrients to the overall diet and help curb hunger.

The following standards apply to sites serving snacks to adults and children.

All beverages and purchased foods must meet the Standards for Purchased Food in Section 1.

1. Beverages

- **Require** serving water at all snack times. Recommend tap water whenever possible. Refer to Executive Order 54 of 2020, ending the purchase of single-use plastic bottles and restricting their sale on City property.[27]
- **Require** 100% juice be:
  - Limited to ≤ 6 oz per serving for programs serving children age 5 and older
  - Limited to ≤ 4 oz per serving for programs serving children ages 3 to 4 years
  - Not served to children age 2 and younger
  - Served no more than twice per week, for sites serving snacks only
- Recommend phasing out juice completely.

2. Food Category Requirements

- **Require** at least 1 serving per week of fruits or vegetables. 100% fruit juice does not count toward this requirement.
- **Require** snacks served contain choices from at least two of the following three food categories: fruits and vegetables, grains, or proteins.

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[27] To read the Executive Order 54 of 2020, visit **nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-54.pdf**.

D. Special Occasion Standards for Meals and Snacks

Special occasion standards apply to trips, parties for major holidays, and special events. This also includes food purchased from vendors not routinely used by the agency for normal food service.

- **Require** serving a vegetable or fruit option, such as fresh fruit, leafy green salad, or vegetable slices.
- **Require** serving water at all special occasions.
- Recommend adopting a policy for special occasion meals and snacks.
- Recommend limiting special occasion meals and snacks (for example, to once per month).
- Recommend serving one or more whole or minimally processed plant protein options for every animal-based meal.
- Recommend, if serving sweets or desserts, offering them in moderation and in small portions.
- Recommend adhering to the beverage standards described in Section 1C on Pages 3 and 4.

Section 3. Agency- and Population-Specific Standards and Exceptions

A. Adults in Custody

- **Require** ≥ 2,200 calories per day for agencies serving adults who are incarcerated.
- **Require** the nutrition analysis for lunch and dinner meals does not include servings of milk. Milk may still be offered but does not count toward the nutrient totals for those meals.

B. Youth Detention Facilities

- **Require** ≥ 2,200 calories per day for agencies serving the youth detention population.
- **Require** the nutrition analysis for dinner meals does not include servings of milk. Milk may still be offered at dinner but does not count toward the nutrient totals for the meal.

C. Adult Residents of the Shelter System

- **Require** ≥ 2,200 calories per day for people age 14 and older residing in the shelter system (for example, single-adult shelters, Safe Havens, drop-in centers, adult family shelters, shelters for families with children).[28]
- **Require** the nutrition analysis for lunch and dinner meals for people age 14 and older does not include servings of milk. Milk may still be offered but does not count toward the nutrient totals for those meals.

D. Child Care Services Providers

- Home-based child care providers are not required to comply with these Standards.

E. Patients Under Therapeutic Care

- Nutrition requirements consistent with established medical guidelines and diets for patients under therapeutic care supersede the nutrition criteria outlined in these Standards. The Patient Bill of Rights allows patients under therapeutic care to request specific food items. These items are considered part of the therapeutic diet and do not need to meet nutrition criteria.
- **Require** plant-based meal and snack options be available to patients upon request, in compliance with New York State law.[29]

F. Populations With Religious or Special Dietary Food Needs

- If an agency cannot meet the required purchased food standards in Section 1 due to a lack of availability of food items that meet specific needs of the population it serves (for example, packaged kosher foods), the agency is expected to seek suitable replacements in the marketplace as quickly as possible. The agency must identify and report these products to the Mayor's Office of Food Policy and the NYC Health Department.

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[28] Calorie requirements are based on 2020-2025 Dietary Guidelines for Americans.

[29] New York State regulations can be found at **legislation.nysenate.gov/pdf/bills/2019/S1471A**.

G. Emergency Food

Agencies that purchase food to be distributed by a third party to emergency food providers, such as soup kitchens and food pantries, are **required** to follow the standards outlined in Section 1. This does not include food purchased for the intention of a disaster response outlined in this section (see Section 3J, Foods for Disaster Response).

H. Federal Commodity Food Program

Food provided by the federal government to agencies or agency programs is not required to meet the standards outlined in Section 1. However, agencies and programs accepting these foods **are required** to meet the standards outlined in Section 2. Agencies and programs are expected to provide documentation upon request to verify which products were obtained through the commodity food program.

I. Donated Foods

Foods that are donated or provided at no cost to a program may be permitted to be served as a supplement to regularly scheduled food service.

Donated individual food items that contain Nutrition Facts labels, such as those listed in Section 1 (for example, canned and frozen vegetables, sliced sandwich bread) must adhere to the standards outlined in Section 1. These items are not required to meet the standards in Section 2.

Donated ready-to-eat or prepared foods (for example, ready-to-eat sandwiches or meals) are not required to meet standards outlined in Sections 1 and 2. However, if supplementing food service with donations of prepared foods, programs should make an effort to serve these foods in small portions (for example, half-size sandwiches).

Programs may not accept any donations of candy, desserts (for example, cakes, cookies, pastries), fried foods (for example, fried chicken, potato chips, french fries, doughnuts), or sugary drinks (for example, soda, fruit drinks, iced tea) for use in regular meal or snack service. If desserts are donated for a special-occasion meal, they may be offered if a “healthy option” (for example, fresh fruit, leafy green salad, vegetable slices) is offered with them; these items may only be served in preplanned, special-occasion meals.

Programs should prioritize donations that are healthy, including minimally processed, whole and plant-based foods such as fruits, vegetables, whole grains, and low-sodium foods when possible.

J. Foods for Disaster Response

Food purchased by agencies to serve solely for a disaster or crisis response are not restricted by these Standards, in recognition that foods stocked for such purposes intentionally include nutrient-dense products.

Recommend agencies develop a plan to address nutrition requirements for meals and snacks served during a prolonged disaster (more than one month) and submit a plan to the NYC Health Department.

For more information, visit **nyc.gov/healthyworkplaces**.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EXECUTIVE ORDER NO. 8

February 10, 2022

COMMITMENT TO HEALTH AND NUTRITION: FOOD STANDARDS AND GOOD FOOD PURCHASING

WHEREAS, the City is committed to procuring, preparing, and serving healthy and nutritious food, and promoting transparency relating to such vital services; and

WHEREAS, the City is further committed to promoting food justice; to empowering New Yorkers with information about, and access to, healthy and nutritious food; and to reducing health inequities shaped by historically racist and discriminatory policies and practices across the nation that have led to inequitable distribution of resources and opportunities for health and contributed to unfair differences in diet-related disease outcomes among the New York City population; and

WHEREAS, the City serves its most marginalized populations through its public schools, hospitals, older adult centers, correctional facilities, homeless shelters, and other programs; and

WHEREAS, the City has been at the forefront of a number of progressive food policy initiatives, for example, developing Food Forward NYC, a 10-year strategic food policy plan; expanding the Supplemental Nutritional Assistance Program; launching universal free school meals; and implementing the Emergency Food Assistance Program, all of which provide food and nutrition education in City schools, day care programs, after-school programs, and other settings throughout the city; and

WHEREAS, the City seeks to achieve sustainability goals in its food programs, with a target of reducing the associated greenhouse gas emissions by 25 percent by 2030, and to carbon neutrality by 2050; and

WHEREAS, City Charter section 20-i establishes an Office of Food Policy, which provides recommendations to the Mayor and City agencies regarding food policy, coordinates multi-agency initiatives relating to food policy, performs outreach to stakeholders to advance the City's food policy, and supports initiatives designed to promote access to healthy food, focusing in particular on communities that have historically had inequitable access to healthy foods due to class oppression, racism, and environmental injustice;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Definition. For the purpose of this order, the term "mayoral agency" means (i) any agency the head of which is appointed by the Mayor; (ii) any agency headed by a board, commission or other multi-member body, the majority of the membership of which is appointed by the Mayor; and (iii) the Office of the Mayor.

§ 2. Revocation. Executive Order No. 122, dated September 19, 2008, is revoked.

§ 3. Food Standards. The Commissioner of the Department of Health and Mental Hygiene ("Health Department") and the Mayor's Office of Food Policy ("MOFP") shall revise the City Agency Food Standards ("Food Standards") for all meals or food supplies that are purchased, prepared or served in agency programs or other relevant settings. The revised Food Standards shall be circulated to all agency heads by April 1, 2022, and at least once every three years thereafter, following review and revision as needed, and incorporating input from other relevant agencies. Such review shall take into consideration implementation progress and ensure that the Food Standards continue to meet or exceed current dietary recommendations based upon the latest scientific evidence. Mayoral agencies shall follow the Food Standards for meals that are purchased, prepared or served by such agencies. Mayoral agencies shall also direct their contractors to follow the Food Standards for all meals served in City-funded programs.

§ 4. Good Food Purchasing Program. MOFP shall establish a Good Food Purchasing Program, the goal of which shall include the study and publication of data, on an annual basis, that provides transparency about how mayoral agencies' procurements impact core values relating to local economies, environmental sustainability, valued workforce, animal welfare, and nutrition affecting the health of all New Yorkers.

§ 5. Agency Cooperation. (a) All mayoral agencies shall cooperate with MOFP and the Health Department in supporting compliance with the Food Standards and establishment of the Good Food Purchasing Program. Such cooperation shall include, but not be limited to, assessing the extent to which the meals served by the agencies meet the Food Standards; providing relevant procurement and other data to MOFP; instituting and maintaining programs designed to increase access to affordable and nutritious food in communities with limited access to such items; and increasing the awareness and utilization of food assistance programs by those who qualify for them. (b) The City shall take all steps necessary, consistent with applicable law, to facilitate and promote participation by the New York City Department of Education and the Health + Hospitals Corporation in the initiatives set forth in this Order.

§ 6. This Order shall take effect immediately.

Eric Adams
Mayor

ATTACHMENT X. EXECUTIVE ORDER 8. GOOD FOOD PURCHASING

Executive Order 8, "Commitment to Health and Nutrition: Food Standards and Good Food Purchasing" establishes New York City's commitment to measuring food procurement against the values of the Good Food Purchasing (GFP) initiative, including transparency, environmental sustainability, local economies, nutrition, a valued workforce, and animal welfare. To comply with EO 8, awarded contractors must provide detailed product sourcing data and complete annual Food Standard compliance reporting. The City will make a redacted version of the purchasing data public as part of its commitment to transparency as defined in EO 8.

Quarterly, with their best efforts, contractors (working with food vendor and/or caterer) shall provide to the City detailed product sourcing information for all food and beverage products purchased and distributed. Information provided should include, but is not limited to, the following sourcing information for all foods and ingredients:

- Purchase, Transaction or Delivery Date
- Agency Name (DHS, Aging etc.)
- Feeding Program Location Name (Lenox Hill, etc.)
- Delivering Entity Name (Distributor, Processor, Caterer, Farm, etc.)
- Manufacturer/Farm Name
- Brand Name
- Pack Size
- Item Weight
- Item UOM
- Case Net Weight
- Product Description
- Product Category
- Distributor Product Code
- Mfgr. Code
- Item Number
- SKU/Item Code
- Total Quantity Purchased
- Total Spend
- Feeding Program Delivery Location Address Full
- Source Distributor/Vendor/Farm Address Full
- *Available Product Attribution (Optional, e.g. USDA Organic, M/WBE, Kosher or Halal)*

Data should be provided to the City quarterly starting in the first quarter after contract execution (the Fiscal Year extends July 1 through June 30 of the following year) in an acceptable machine-readable format including but not limited to Excel. Paper invoices, pdfs or scanned images are not an acceptable format.

Submission of preliminary data

To demonstrate the ability to meet this requirement, contractors shall submit a preliminary data report in Excel format, in the bid or proposal supporting documentation, including the following sourcing information:

- Purchase Date
- Delivery Date
- Agency Name (DHS, Aging etc.)
- Meal Location Name (Lenox Hill, etc.)
- Delivering Entity Name (Distributor, Processor, Caterer, Farm, etc.)
- Manufacturer/Farm Name
- Brand Name
- Pack Size
- Item Weight
- Item UOM
- Case Net Weight
- Product Description
- Product Category
- Distributor Product Code
- Mfgr. Code
- GTIN
- *Invoice Date (Optional, if purchase date is already provided)*
- Total Quantity Purchased
- Total Spend
- Location Address Full
- Source Distributor/Vendor/Farm Address Full
- *Available Product Attribution (Optional, e.g. USDA Organic, M/WBE, Kosher or Halal)*

The preliminary report can be submitted using the template provided (‘GFP Data Template Large Businesses’) or in another Excel format that includes the required information. Paper invoices, pdfs or scanned images are not an acceptable format. The preliminary traceability report will not be made public. If awarded or contracted, vendors will be required to submit a final usage report, as outlined above. Failure to submit a preliminary traceability report may result in the bidder being deemed non-responsive.

GOOD FOOD PURCHASING TRACKING FORM

Purchase, Transaction or Delivery Date (YYYY-MM-DD)	Delivery Date	Agency Name	Feeding Location Name	Delievering Entity Name (Distributor, Processor, Caterer, Farm, etc.	Manufacturer/Farm Name	Brand Name	Pack Size	Item Weight	Item UOM	Case Net Weight	Product Description	Product Category	Distributor Product Code	Mfgr. Code	Item Number	Item Code/SKU	Total Quantity Purchased	Total Spend	Location Address Full	Source Distributor/Vendor/Farm Address Full	Available Product Attribution

Column Header	Required?	Definitions
Purchase, Transaction or Delivery Date (YYYY-MM-DD)	Required	Date of Purchase, Transaction or Invoice. If reporting a consolidated monthly report, please enter the 15th day of the purchase month. YYYY-MM-DD format preferred.
Agency Name (DHS, Aging etc.)	Required	Name of NYC agency providing meal program
Feeding Location Name (Lenox Hill, etc.)	Required	Name of Feeding Facility
Delievering Entity Name (Distributor, Processor, Caterer, Farm, etc.	Required	Name of Distributor or Delivering Entity. You may submit multiple distributors on a single template.
Manufacturer/Farm Name	Required	Name of Manufacturer, Processor, or Farm
Brand Name	Required	Brand name from Manufacturer (if different from Manufacturer/Farm Name)
Pack Size	Required	Pack Size (Ex: a 4/5lb case - Enter "4" for the number of units in a case)
Item Weight	Required	Enter number of pounds in a unit (Ex: a 4/5lb case - Enter "5" for the number of pounds in a unit)
Item UOM	Required	Unit of Measure (Ex: a 4/5 lb case - Enter "LB")
Case Net Weight	Required	Enter Case Net Weight (if available - Ex: 4/5lb case - Enter "20")
Product Description	Required	Item Description as it appears on invoice
Product Category	Required	Top-Level Category of Product, (Ex: Produce, Dairy, Eggs, Meat)
Distributor Product Code	Required	Distributor Product Code on Invoice (if available)
Mfgr. Code	Required	Manufacturer Product Code Number (if available)
Item Number	Required, if available	MCOS Item Number (contracting number)
SKU/Item Code	Required	SKU (Stock Keeping Unit)
Total Quantity Purchased	Required	Total Cases Purchased
Total Spend	Required	Total Spend of Products (Case Price * Number of Cases Purchased)
Feeding Location Address Full	Required	Address of program site where product is delivered (Street, City, State, Zip Code)
Source Distributor/Vendor/Farm Address Full	Required	Enter address of Manufacturer Brand, Processor, or Farm from where product was sourced, or if not available, enter Distribution Center address. Used to calculate distance from client location.
Available Product Attribution	Optional	Enter any Sustainable or Social Attribute if accessible (if available - e.g., Local, USDA Organic, MSC Certified, M/WBE, Halal, Kosher)

*This template has been updated with two additional fields (rows 17 and 18) to assist in joining transactional reports with additional GFP data.

P L E A S E R E T A I N O N F I L E

THE NEW YORK CITY PURCHASE CONTRACT
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
DIVISION OF MUNICIPAL SUPPLY SERVICES
MUNICIPAL BUILDING, NEW YORK, N.Y. 10007

PART I
GENERAL DEFINITIONS

The definitions set forth in Chapter 1, Section 1-01 of the Procurement Policy Board Rules shall apply to this Contract.

1. "Agency" is the particular department, board, bureau, office or other City subdivision organizing and supervising procurement; i.e., solely the Department of Citywide Administrative Services.

2. "Agency Chief Contracting Officer" means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate agency staff in conjunction with the City Chief Procurement Officer; i.e., the Agency Chief Contracting Officer of the Department of Citywide Administrative Services or a delegated representative.

3. "Agency Head" is a term referring to heads of city, county, borough, or other office, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury; i.e., the Agency Head of the Department of Citywide Administrative Services or a delegated representative.

4. "Blanket Order" is a purchase order issued to a vendor by an agency with a "not to exceed" amount and without specific quantities and delivery dates. This enables the agency to make purchases at different times and in varying amounts from a requirement contract by means of shipping instructions, the total expenditures not to exceed the amount of the blanket order.

5. "City" is the City of New York.

6. "City Chief Procurement Officer" means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of mayoral agency staff, including the Agency Chief Contracting Officers (ACCO) and any offices which have oversight responsibility for the procurement of construction, computer and computer services.

7. "Commissioner" means the Commissioner of the Department of Citywide Administrative Services of the City of New York or any Deputy or Assistant Commissioner who has been delegated authority.

8. "Comptroller" means the Comptroller of the City.

9. "Contract" includes the bid book, the invitation for bids, these general definitions, the instructions to bidders, the general conditions, the special conditions, the affirmations, the bid and schedule of quantities and prices, the drawings and specifications, the Budget Director's Certificate when applicable, any special instructions to bidders, together with all addenda, change orders or modifications, all provisions required by law to be inserted in this Contract whether actually inserted or not, purchase order or notice of award, performance and payment bonds when required, and notice to proceed with work, when applicable.

10. "Date of Contract Award" shall be the date of Notice of Award, if issued, or otherwise the perforated date of Purchase Order.

11. "Department" means the Department of Citywide Administrative Services, City of New York.

12. "Division" means the Division of Municipal Supply Services, Department of Citywide Administrative Services.

13. "Goods" are the subject matter of this contract and include but are not limited to supplies, articles, commodities, equipment, materials, merchandise or wares, together with any labor, services or other work necessary for performance of the Contract.

14. "Law" or "Laws" shall include but not be limited to 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.

15. "Schedule" is the contract schedule of quantities, prices, specifications and descriptions contained in the Bid document.

16. "Seller," "Supplier," "Contractor," "Vendor" or "Bidder" is the person, firm or corporation awarded this Contract and obligated to furnish and deliver the Goods to the City in accordance with all the terms and conditions of the Contract.

17. "Time of Performance" means the specific time or times indicated in the Contract at which or within which delivery or other performance is to be completed.

PART II
STANDARD INSTRUCTIONS TO BIDDERS

THESE INSTRUCTIONS ARE STANDARD FOR ALL CONTRACTS FOR GOODS ISSUED BY THE DIVISION OF MUNICIPAL SUPPLY SERVICES. THE DIVISION OF MUNICIPAL SUPPLY SERVICES MAY DELETE, SUPERSEDE OR MODIFY ANY OF THESE STANDARD INSTRUCTIONS FOR A PARTICULAR CONTRACT BY INDICATING SUCH CHANGE IN THE BID BOOK, THE SPECIAL INSTRUCTIONS TO BIDDERS OR IN THE SCHEDULE.

1. CONTRACT - INTERPRETATION AND EXAMINATION

1.1 Request for Interpretation or Correction. Prospective bidders must examine the Contract Documents carefully and before bidding must request the Agency Chief Contracting Officer 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 Agency Chief Contracting Officer may decide to include, will be issued in writing by the Agency Chief Contracting Officer as an addendum to the contract, which will be sent by mail or delivered to, and acknowledged by, each person recorded as having received a copy of the contract documents from the Contract Clerk, and which will also 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.

Only the written interpretation or correction given by the Agency Chief Contracting Officer is binding. Bidders are warned that no other Officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the contract.

1.2 The documents, samples, and any other elements comprising this Contract are intended mutually to explain and complement one another. Any factual conflicts between or among the separate elements, any errors or omissions, or any doubt as to the requirements of this Contract shall be resolved or corrected in writing by the Agency Chief Contracting Officer. The Seller shall have no power unilaterally to make any such resolutions or corrections. Such resolutions or corrections by the Agency Chief Contracting Officer shall be final and conclusive upon the Seller. If Seller fails to bring any conflict, error, or omission to the attention of the Agency Chief Contracting Officer prior to submission of its bid, Seller shall be deemed to have contracted to produce the goods and perform the work in the most expensive manner using only the best material and workmanship.

1.3 Priority of Documents in the Bid. Should there be conflicting provisions in the documents of this contract the order of precedence shall be: (1) Schedule of Quantities, (2) Specifications, (3) Drawings, (4) Special Instructions, (5) General Conditions and (6) Standard Instructions.

When there is a variation in the description of an item, between the specification, sample, or catalog or model number, the description contained in the specification section of these documents will prevail. If description and drawings conflict, the drawings shall prevail.

Drawings or samples, even though approved subsequent to the award, shall not be deemed a waiver or modification of the specifications unless this Contract has been modified as provided in Section 9 of the General Conditions (Part III).

2. <u>BIDS</u>

2.1 Form of Bid. All bids shall be submitted on forms furnished by the City. Such forms, and envelopes in which to submit bids, may be obtained at the place designated in the advertisement. No alteration, erasure or addition is to be made to the typewritten or printed matter of the bid documents. Such changes shall be of no force and effect and may be grounds for rejection of the bid.

2.2 Submission of Bids. A bid will not be accepted if it is received in the Division of Municipal Supply Services after the time scheduled for the opening. This applies to bids sent by mail as well as to those delivered by hand. If a vendor chooses to use special delivery service it will be the responsibility of the vendor to ensure that the bid is delivered directly to the Division of Municipal Supply Services' Bid Room. Bids must indicate on the outside envelope the bid number and bid opening date; otherwise the bid will not be accepted and will not be opened.

2.3 Prices, Extensions and Discounts.

(a) The Bidder shall insert against each item which it proposes to furnish and deliver the price per stated unit and the extensions. In the event of a discrepancy between the unit price and the extension, the unit price will govern. If discount bids are requested, and there is an error in the extension of the total, the discount offered will govern.

(b) Cash discounts will not be considered in determining the low bidder.

2.4 Sales, Excise and Federal Transportation Taxes. Unless this Contract indicates otherwise, the City is exempt from the payment of any sales, excise or federal transportation taxes. The price bid, whether computed as a net unit price or based upon a trade discount from catalog list prices, must be exclusive of taxes and will be so construed. The purchase order may be accepted in lieu of a Sales Tax Exemption Certificate.

2.5 Delivery Charges. All prices bid must be on the basis of F.O.B. delivery point, unloaded, inside and assembled unless otherwise indicated in this Contract.

2.6 Containers and Reels. All containers and reels shall become the property of the City unless otherwise specified. When containers or reels are returnable, they will be returned at the Seller's expense; otherwise they will be paid for by the City at the rate agreed upon in this Contract.

2.7 Manufacturers' Warranties and Guaranties. Unless otherwise indicated in this Contract, the Seller shall issue or 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.

2.8 Variable Quantities and Delivery Points. The quantities and delivery points set forth in this Contract will be subject to one of the following variations which will be indicated in the Bid Book.

(a) Type "A" Contract. The Agency Chief Contracting Officer during the term of this Contract may increase or decrease the quantity of any item or class; however, any contract increases which cumulatively exceed the greater of ten percent (10%) of the total cost of this contract or $100,000 must be approved in writing by the City Chief Procurement Officer. Delivery points are limited to those indicated in the Bid Book unless modified by mutual agreement of the parties.

(b) Type "B" Contract. The Agency Chief Contracting Officer reserves the right, during the term of this Contract, to order such quantities for such delivery points and under such conditions as may be indicated in the Bid Book. Unless otherwise indicated in the Bid Book, the City may order up to 100% more of the base quantity set forth in the bid.

(c) Type "C" Contract: (Requirement Contract). A requirement contract is a contract for an indefinite amount of goods to be furnished at specified times, or as ordered, that establishes unit prices, usually of a fixed price type. Generally, an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the City is obligated to order and may also provide for a maximum quantity provision that limits the City's obligation to order. The Agency Chief Contracting Officer may, with the consent of Seller, extend the term of this Contract up to an additional 120 days.

2.9 Proprietary Information/Trade Secrets.

The bidder shall identify those portions of their bid that they deem 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 communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder. 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.

3. BIDDER QUALIFICATIONS

3.1 Evidence of Ability.

(a) Before or after making an award of contract, the City reserves the right to inspect the premises where Goods are manufactured, prepared or stored. When the source of production is outside the City of New York, the Agency Chief Contracting Officer may demand the submission of satisfactory evidence that the Goods proposed for delivery are in every respect what they are represented to be.

(b) The Bidder shall, upon request, submit evidence that will prove to the satisfaction of the Agency Chief Contracting Officer that it is qualified and able to furnish the Goods on which it bids and deliver them in the manner and time specified. It shall also furnish evidence that it has secured the necessary licenses, permits or certificates, required by any legislative or regulatory body having jurisdiction, to carry on the business of furnishing the Goods on which the bid was submitted.

(c) If the evidence required in paragraphs (a) and (b) of this sub-section is not furnished, or if, upon examination of such evidence or other inspection of the plant or premises, it is found that the Bidder does not comply with the requirements set forth in this Contract, the Agency Chief Contracting Officer shall have the right to reject the bid in whole or in part. Should the non-compliance be discovered after the award is made, the Agency Chief Contracting Officer shall have the right to cancel and terminate this Contract and/or declare the Seller in default, in addition to any other remedies provided by contract or at law or equity.

(d) In addition to any other requirement of this Contract, the Agency Chief Contracting Officer may request the Bidder to submit a sworn statement or submit to an oral examination setting forth such information as may be deemed necessary by the Agency Chief Contracting Officer to determine the Bidder's ability and responsibility to perform the work and supply the Goods in accordance with the Contract.

3.2 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 Chief Contracting Officer may reject the bid.

3.3 Examination before Award. The City reserves the right, before making an award, to conduct examinations to determine whether or not the Goods proposed to be furnished meet the requirements set forth in the Contract. If any such examination shows that the Contract requirements are not complied with, or that Goods proposed to be furnished do not meet the requirements called for, the Agency Chief Contracting Officer may reject such bid, and may award the Contract to the lowest responsible Bidder. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon the City to make any examinations before awarding a Contract. It is further understood that the making or waiving of any such examination in no way relieves the Seller from fulfilling all requirements and conditions of this Contract.

4. SPECIFICATIONS AND SAMPLES

4.1 Specifications and "Or Equal" Bidding. Written specifications may be used to describe the Goods required. The Bidder must comply with all material requirements of the specifications. When the name of a manufacturer, a brand name, manufacturer's catalog number, or "as per sample" is used as the bid standard along with salient characteristics in describing an item followed by "or equal," this description is used to indicate quality, performance and other essential characteristics of the Goods required. If bidding on make, model, brand or sample specified, the words "or equal" should be stricken out by the Bidder. All bidders are presumed to be bidding on the make, model, brand or sample specified unless they submit, either on the line provided therefor, or in a letter attached to the bid, all of the following: manufacturer's name, catalog number and any other information necessary to prove that an intended substitution of Goods is equal in all essential respects to the bid standard. The Bidder must prove to the satisfaction of the Agency Chief Contracting Officer that its designated substitute is equal to the bid standard and salient characteristics in all material respects; otherwise, its bid will be rejected. The City reserves the right to consider material, characteristics which it, in its sole discretion, deems intrinsic to the nature of the product even though such characteristic has not been listed as salient.

Whenever Goods are indicated in the specifications or schedules by a catalog description, or by a trademark or trade name or by the name of any particular patentee, manufacturer, or dealer, such description shall mean the Goods indicated or any equal thereto in all essential respects as shall be determined by the City, except when the Goods are purchased according to an Acceptable Brands List or are indicated as brand specific only, no equal will be accepted.

4.2 Unused Goods. Unless specifically noted in this Contract, all Goods must be new and unused, however, vendors are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable without jeopardizing the performance or intended end use of the product unless such use is precluded due to health and welfare or safety requirements or product specifications contained herein.

4.3 Submission of Samples, Pilot Models and Drawings. Samples and descriptive literature shall not be submitted unless expressly requested elsewhere in the contract or contract documents. Any unsolicited 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. When samples, pilot models or drawings are requested from the Bidder or required by this Contract, they shall be delivered by the Bidder, properly identified, within fifteen (15) calendar days of the request unless this Contract indicates a different time. If the Bidder fails to deliver the same in a timely manner, the Agency Chief Contracting Officer shall have the right to deem the bid non-responsive or to cancel and terminate the contract.

Samples, drawings and pilot models requested by the City shall be submitted to the 18th floor, Municipal Building, New York, New York 10007, unless some other place is indicated. Samples, drawings and pilot models shall be submitted free of charge.

(a) Samples and Pilot Models. If in the judgment of the City the sample or pilot model submitted is not in accordance with the requirements prescribed in the bid documents, the City may reject the bid. If an award has been made, the City may cancel the contract at the expense of the Seller.
A sample or pilot model may be held by the City during the entire term of the contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample or pilot model shall be removed by the Bidder at the Bidder's expense within thirty (30) days of written request by the City. If Bidder fails to remove them within the thirty (30) day

period, then the sample or pilot model shall become the sole property of the City and the City shall have the right to dispose of them at no cost or liability to the City and the Bidder shall have no right of action for damages or any right to an accounting therefor. The City will not be responsible for any samples or pilot models which are destroyed or damaged by examination.

(b) Drawings and Plans. Approval by the Agency Chief Contracting Officer of drawings and/or plans of details for any Goods or installation will not relieve the Seller from its responsibility for furnishing the Goods or installation of proper dimensions, size, quantity and quality to efficiently perform the work and carry out the requirements and intent of the layout of descriptive drawings forming a part of the bid documents. Such approval shall not relieve the Seller from responsibility for design or other errors of any sort in the drawings or plans.

Drawings, plans and copies thereof prepared by Seller specifically in the performance of this Contract shall be submitted to the City prior to payment and shall become the property of the City for use by the City in any manner whatsoever, without further compensation, including as specifications for future bids and contracts. Unless otherwise provided in this Contract, Seller also retains a proprietary interest in any such drawings and plans.

4.4 Acceptable Brands List. When Goods are purchased under an "Acceptable Brands List," the Agency Chief Contracting Officer reserves the right, before or after the award, to call for samples and s/he may remove any brand from the "Acceptable Brands List" which has been found to have changed in quality since the date on which the list was compiled. If such change is discovered prior to this award, the bid may be rejected; if the change takes place or is discovered after this Contract has been awarded, this Contract may be considered breached by the Seller.

5. AWARD

5.1 Item and Class Awards. Awards may be made by item or class in the interest of the City as determined by the Agency Chief Contracting Officer. When class bids are indicated in the Contract, the Bidder must bid on each item in the class. A Bidder desiring to bid "no charge" on an item in a class must so indicate; otherwise the bid for the class will be construed as incomplete and may be rejected. The Agency Chief Contracting Officer, nevertheless, reserves the right to delete an item(s) from a class and award the remaining items on a class basis, in the interest of the City. When a class bid shows evidence of unbalanced bid prices, such bid may be rejected.

5.2 Mistake in Bids:

(a) Mistakes 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 as provided in Section 5.8, below.

(b) Mistakes Discovered Before Award

1. In accordance with Chapter Three, Section 3-02(m) of 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 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 is Not Evident. A bidder 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.

(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.

5.3 Rejection of Bids:

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

1. The bidder fails to furnish any of the information required pursuant to Division of Labor Services or Vendex requirements hereof; 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; or if

4. The bid, in the opinion of the Agency Chief Contracting Officer, contains unbalanced bid prices and is thus non-responsive.

(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 if in its sole opinion it shall deem it in the best interest of the City so to do.

(c) Rejection of All Bids and Negotiation With All Responsible Bidders. The Agency Head may determine that it is appropriate to cancel the Invitation for Bids after bid opening and before award and to complete the acquisition by negotiation pursuant to applicable PPB rules.

5.4 "Foreign" Goods. If a Bidder proposes to furnish any item which is not produced, fabricated or processed in the United States or its territorial possessions, it must write the word "foreign" and the country of origin of such item in the Bid Book, and failure to do such may be a ground for rejection of such Goods. Unless the designated standard is of foreign origin, failure on the part of the Bidder to designate an item as foreign will be construed to indicate that the item offered is domestic.

5.5 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;

(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.

5.6 Alternate Products. A Bidder may not bid multiple products for one bid item. If a Bidder offers more than one, only the lowest price offering will be considered. If the price offerings are identical, only the first item listed will be considered.

5.7 Waiving Informalities. The Agency Chief Contracting Officer reserves the right to waive any informality, technicalities, irregularities and omissions in a bid when the Agency Chief Contracting Officer deems such waiver to be in the interest of the City.

5.8 Pre-Opening Modification or Withdrawal of Bids. Bids may be modified or withdrawn by written notice received in the office designated in the contract for receipt of bids, before the time and date set for the bid opening. A telegraphic, mailgram or facsimile withdrawal shall be effective provided it was received in the manner set forth in Section 3-02(j) of the Procurement Policy Board Rules. If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

5.9 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.

5.10 Bid Evaluation and Award. In accordance with the New York City Charter, the Procurement Policy Board Rules and the terms and conditions contained herein, this contract shall be awarded, if at all, to the 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 or award to other than the lowest responsible bidder pursuant to Section 3-02(o) of the PPB Rules. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation For Bids.

Restrictions. No negotiations with any bidder shall be allowed to take place except under the circumstances and in the manner set forth in the Procurement Policy Board Rules. Nothing in the rule shall be deemed to permit a contract award to a bidder submitting a higher quality item than that designated in the Invitation For Bids if that bid is not also the most favorable bid.

5.11 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. For further information concerning these rights, the bidder is directed to Chapter 2, Sections 2-07, 2-08 and 2-10 of the Procurement Policy Board Rules.

PART III
GENERAL CONDITIONS

1. PERFORMANCE

The Seller shall furnish and deliver the Goods in the manner and to the destination and within the delivery time herein specified. The Seller shall accept as full compensation therefor the sums set forth opposite the respective Goods called for in the Bid Book, which sums are amounts at which the Contract was awarded to the Seller at the letting thereof.

2. TIME OF PERFORMANCE

2.1 Extending Time of Performance. The Time of Performance may be extended in either of the following ways:

(a) If the performance of the Seller is delayed by an act or omission of the City, the Seller shall be allowed a reasonable extension in the Time of Performance, and no claim for the delay or damages resulting therefrom shall be made by or allowed to the Seller.

(b) If the performance of the Seller is delayed for any other cause beyond the control of either party, an extension of time may be granted by the Agency Chief Contracting Officer solely at his/her discretion. The Seller shall not be responsible for delay resulting from its failure to deliver if neither the fault nor negligence of the Seller, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies or other similar cause beyond the control of the Seller, or to strikes, fires or floods, including strikes, fires or floods affecting its subcontractors or materialmen where no alternate source of supply is available to the Seller. Should such excusable delay inconvenience the City by creating an emergency thus necessitating the purchase of the Goods involved elsewhere, which necessity shall be conclusively determined by the Agency Chief Contracting

Officer, the Agency Chief Contracting Officer shall have the right to purchase such Goods elsewhere without liability to the Seller. To the extent such purchases are made, the City shall be relieved of the obligation to purchase the Goods from the Seller and the Seller shall be relieved of the obligation to furnish such Goods to the City.

2.2 Application. 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.

2.3 Non-Waiver. The delivery and acceptance of any Goods after the Time of Performance shall not be deemed a waiver of the right of the Agency Chief Contracting Officer to terminate this Contract or to require the delivery of any undelivered Goods in accordance with this Contract or any other remedy whether contractual or otherwise stated in law or in equity.

3. TERMS AND CONDITIONS OF PERFORMANCE

3.1 Competent Workers. The Seller shall employ only competent workers in the performance of this Contract. The Seller's performance of this Contract, or of any other work, shall not cause or result in a suspension of, delay in, or strike upon the work to be performed hereunder by any of the trades working hereon or on any other contracts with the City. If, in the opinion of the Agency Chief Contracting Officer, the Seller violates such obligation, the Agency Chief Contracting Officer, in his/her sole discretion and at his/her option, may either demand that any incompetent workers be replaced and not again employed in the performance of this Contract, which demand shall be complied with by the Seller, or may, upon notification to the Seller, consider the Seller in default.

3.2 Unsatisfactory Performance. If, in the opinion of the Agency Chief Contracting Officer, either the Seller's performance is unsatisfactory or is not being carried out with due diligence, the Seller shall immediately remedy such performance. Failure of the Seller to so conform will be deemed a material breach of this Contract.

3.3 Substitution of Goods. In the event a specified manufacturer's commodity listed in the Seller's bid document becomes unavailable or cannot be supplied to the City by the Seller for any reason (except as provided for in 2.1(b) above) a product deemed by the Agency Chief Contracting Officer to be the equal of the specified commodity must be substituted by the Seller at no additional cost or expense to the City.

3.4 Purchase Order Binding When Mailed. Unless terminated or cancelled by the Agency Chief Contracting Officer pursuant to the authority vested in him/her, purchase orders shall be effective and binding upon the Seller when placed in the mail prior to the termination of the contract period, addressed to the Seller at the address shown on the award.

3.5 Termination or Suspension of Contract. Where the Agency Chief Contracting Officer deems it to be in the interest of the City, the Agency Chief Contracting Officer may terminate or suspend the performance of this Contract in whole or in part, for the convenience of the City.

4. DELIVERY

4.1 Notice to Seller to Deliver. No delivery shall become due or be acceptable without a written order or shipping instruction by the City, unless otherwise provided in this Contract. Such order or shipping instruction will contain the quantity, time of delivery and other pertinent data. However, on items urgently required, the Seller may be given telephone notice, to be confirmed by an order in writing. If an urgent delivery is required within a shorter period than the delivery time specified in this Contract and if the Seller is unable to comply therewith, the Agency Chief Contracting Officer reserves the right to obtain such delivery from others without penalty or prejudice to the City or to the Seller.

4.2 Delivery Time. Unless otherwise stipulated in this Contract, delivery shall be made between 9 a.m. and 4 p.m., Monday to Friday inclusive. However, on Goods required for daily consumption, or where the delivery is an emergency, a replacement, or is overdue, the convenience of the Agency and the City's inspector shall govern. If, in calculating the number of days from the order date, the delivery date falls on a Saturday, Sunday or holiday, delivery shall be made not later than the next succeeding business day.

4.3 Seller's Advice of Manufacture or Delivery. The Seller shall notify the Agency at least twenty-four (24) hours in advance of delivery.

5. INSPECTION

5.1 Right to Inspect. The City shall have the right to inspect the Goods at the point or points of delivery. The City reserves the right to make additional inspection(s) at the plant of the manufacturer, packer or Seller or its supplier(s). The exercise by the City of the right of inspection shall in no way be deemed a waiver by the City of any right later to reject, revoke acceptance, or recover damages for Goods accepted which are not in fact free from patent or latent defects, or of the Seller's obligation to deliver conforming Goods.

5.2 Removal of Non-Conforming Goods. The Seller shall remove any non-conforming Goods or part thereof at Seller's own expense within a reasonable time not to exceed thirty (30) days after notification of any rejection or revocation of acceptance. The City shall have the right to dispose of rejected Goods left longer than thirty (30) days at no cost or liability to the City and the Seller shall have no right of action for damages or any right to an accounting therefor.

5.3 No Obligation to Minimize Seller's Damage. The City shall be under no obligation to sell or resell any rejected Goods, whether perishable or non-perishable or whether or not such Goods are threatened to or do depreciate in value, in order to minimize the Seller's damages.

5.4 Costs of Additional Inspections. The Seller shall bear the reasonable cost of all further inspections required by reason of any rejection or revocation of acceptance.

5.5 Risk of Loss. Title and risk of loss shall not pass from the Seller to the City until the Goods have been received by the ordering Agency and accepted by the City. Mere acknowledgment by Agency personnel of the delivery or receipt of goods (as in a signed bill of lading) shall not be deemed or construed as acceptance of the Goods received. The Seller bears the risk of loss of all Goods until inspected and accepted; if acceptance is revoked the Seller bears the risk of loss thereafter.

5.6 Right to Cure. Any right of the Seller to "cure," as defined in the New York Uniform Commercial Code, shall be employed by the Seller within a reasonable time. Such reasonable time as determined by the Agency Chief Contracting Officer shall be conclusive on the Seller.

6. NON-DELIVERY AND REJECTIONS

6.1 Rejected Goods. The City may withhold or revoke acceptance of or reject any Goods which are found, upon examination, not to conform to the terms of this Contract. With respect to food and drugs, no written notice of rejection need be given, whereas in all other instances such notice will be in writing.

6.2 Labels. All Goods which are customarily labeled or identified must have securely affixed thereto the original unmutilated label or marking of the manufacturer. Failure to comply with this requirement may be considered sufficient cause for rejection.

When a label or marking is required by any regulatory agency, it must be affixed to all Goods delivered under this Contract.

6.3 Health Regulations. Any food, drug or other Goods which are found to be unwholesome or otherwise unfit for human consumption or use, shall not be removed by the Seller until examined by the appropriate public authorities. If condemned, such Goods shall be disposed of by the Seller in accordance with the rules and regulations of the appropriate public authorities.

Should the Seller fail to make disposal within twenty-four (24) hours after appropriate orders to do so, the City may make such disposal and charge the Seller for the cost involved.

6.4 Liquidated Damages - Delayed or Defaulted Deliveries.

(a) It is not the intention of the City to assess liquidated damages unless they are specifically provided for in this Contract.

(b) Where the "Cover" provision of subsection 6.5 hereinbelow is invoked, the liquidated damages will be assessed as provided therein and will be calculated from the original delivery due date to the date delivery is due from the new Seller.

6.5 Cover (Buying Against Contract).

(a) If the Seller fails to perform in accordance with this Contract, the Agency Chief Contracting Officer may obtain such Goods or any part thereof from other sources with or without public letting, as s/he may deem advisable, and, with no obligation to Seller to mitigate damages. If the price paid in obtaining the goods from other sources is greater than this Contract's price, the difference, plus the reletting cost and the liquidated damages, if any, will be charged against the Seller. If such price is less, the Seller shall have no claim to the difference, but the reletting cost and the liquidated damages will become charges against the Seller.

(b) The reletting cost is hereby determined to be two hundred and fifty ($250) dollars.

6.6 Collection of Charges. All charges becoming due under the provisions of subsection 6.4 hereinabove "Liquidated Damages - Delayed or Defaulted Deliveries" and subsection 6.5 hereinabove "Cover" shall be deducted from current obligations that are due or may become due to the Seller. In the event that collection is not made as provided above, the Seller shall pay to the City on demand the amount of such charges.

7. PAYMENTS

7.1 Weights and Measures. All weights and measures called for shall be net and shall be determined at the point of delivery unless the Bid Book indicates otherwise.

7.2 Payments

(a) It is the policy of the City to process contract payments efficiently and expeditiously to assure payment in a timely manner to firms and organizations who do business with the City.

(b) Payments will be made for the net number of conforming units accepted at the price bid per unit. Proper invoices, when submitted, will be payable within thirty (30) days after either receipt of invoice(s) or acceptance of the Goods, whichever date is later. When periodic deliveries are made during the month, such invoices will be payable within thirty (30) days after either the end of the month or the receipt of invoices or acceptance of the Goods, whichever date is latest.

(c) If public necessity requires the use of any Goods which are subsequently found not to comply with the specification requirements, and if no definite deductions are prescribed, the City will make such deductions as it shall determine to be reasonable.

(d) In any case where a question of non-performance of a contract arises, payment may be withheld in whole or in part at the discretion of the Agency Chief Contracting Officer. Should the amount withheld be finally paid, a cash discount for prompt payment originally offered may be taken by the City as if no delay in payment had occurred.

(e) Any claim by or on behalf of the City against the Seller may be deducted by the City from any money due the Seller. If no such deduction or only a partial deduction is made in such fashion the Seller shall pay to the City the amount of such claim or the portion of the claim still outstanding, on demand.

7.3 Prompt Payment

The Prompt Payment provisions set forth in Chapter 4, Section 4-06 of the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payments made by New York City agencies only 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(3), (4), (5) and (6) 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 an 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.

Pursuant to the Prompt Payment provisions of the Procurement Policy Board Rules, the

Division may designate this contract and the items specified herein as subject to a longer acceptance period to afford a practicable opportunity for testing, installation and inspection. For purposes of vendor payment in such case, the actual date of acceptance by the Division's Bureau of Quality Assurance shall substitute for the Invoice Received/Acceptance Date (IRA Date).

8. FINAL PAYMENT-ESTOPPEL

8.1 Acceptance by Seller is Release. Except for the Seller's right to claim any sums retained by the City under the maintenance or guarantee provisions of this Contract, the acceptance by the Seller, or any person claiming under Seller, of the final payment, whether such payment be made pursuant to any order or judgment of any Court or otherwise, shall constitute and operate as a release to the City from all claims of and liability to the Seller, its representatives or assigns for anything theretofore done or furnished for or relating to or arising out of this Contract and the work done hereunder, and for any prior act, omission, neglect or default on the part of the City or any of its officers, agents or employees.

8.2 No Interest Allowed. No interest shall be allowed on the amount certified, or audited, by the City as the final payment or on any part thereof which the City is ready and willing to pay, except as provided in subsection 7.3 herein above.

8.3 City Not Estopped. Neither the City, nor any department, or officer or employee thereof, shall be precluded or estopped by any return or certificate made or given by any officer, inspector, employee, agent or appointee of the City, or under any provision of this Contract, from showing at any time, either before or after the complete performance and acceptance of the performance of this Contract and the last payment hereunder, the actual quantity and nature of the Goods delivered by the Seller, or any person under this Contract; or from showing at any time that any certificate upon which the payment is made for any or all of the Goods is untrue or incorrect, or improperly made in any particular, or that the Goods or any part thereof delivered by the Seller do not conform to this Contract. The City shall have the right to demand and recover from the Seller such damages as it may suffer by reason of Seller's failure to comply with this Contract notwithstanding any return or certificate and payment in accordance therewith, signed by any official of the City, and such right of the City shall include recovery for any payment made for any or all of the Goods delivered and accepted.

8.4 Statement of Claim. Seller, however, shall not be barred from commencing an action for breach of contract under this provision provided that a detailed and verified statement of claim is served upon the contracting agency and Comptroller not later than forty (40) days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items. Should the provisions of this subsection conflict with those of Section 12, the provisions of Section 12 shall control.

9. MODIFICATION

9.1 Waiver. Waiver by the Department of a breach of any provision of this Contract 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 Contract unless and until the same shall be agreed to in writing by the City as required and attached to the original Contract.

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

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

The contractor shall be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the contractor will be entitled to an extension of time for performance. Adjustments to price shall be computed in one or more of the following ways: (i) by agreement of a fixed price; (ii) by unit prices specified in the contract; (iii) by time and material record; and/or (iv) 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 must be approved in writing by the City Chief Procurement Officer. Any contract amendment which either amends a unit price, cancels required units, or adds a new type of unit item to contract must be approved in writing by the Agency Chief Contracting Officer.

9.3 Price Adjustments for Type "C" Requirement Contracts. Where a requirement contract contains price adjustment provisions, contract changes shall be made in accordance with those provisions. Where no price adjustment provisions are specified, the City may seek a price decrease where there is evidence that market pricing is lower than contract pricing. If a vendor does not agree to the price adjustment, in addition to any other remedy of the City under this contract, the City may terminate the contract with ninety (90) days' written notice.

9.4 Pricing.

A. The Contractor shall whenever requested by the Commissioner 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 of Certification. The Contractor must certify that the cost or pricing data submitted are 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. If the City finds that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(a) The Contractor was a sole source supplier or otherwise in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete and current cost or pricing data had been submitted;

(b) The City should have known that the cost or pricing data in issue were defective even though the contractor took no affirmative action to bring the character of the data to the attention of the City;

(c) The Contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

10. ASSIGNMENT

10.1 Written Consent Required. The Seller shall not assign, transfer, convey, sublet or in any other way dispose of this Contract or any part thereof, or assign any of the monies due or to become due under the Contract, without previous written consent of the Agency Chief Contracting Officer endorsed upon or attached to copies of this Contract. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

10.2 Contract Voidable. If the Seller shall, without the previous written consent of the Agency Chief Contracting Officer, assign, transfer, convey, sublet or otherwise dispose of this Contract to any person, firm or corporation, this Contract may be revoked and annulled and be held void at the sole discretion of the Agency Chief Contracting Officer, and the City shall thereupon be relieved and discharged from any and all liabilities and obligations to the Seller growing out of this Contract, and to its assignee or transferee; provided that nothing herein contained shall be construed to hinder, prevent, or affect an assignment by the Seller for the benefit of its creditors made pursuant to the statutes of the State of New York.

11. COMPLIANCE WITH LAWS AND INDEMNIFICATION

11.1 Compliance with Laws. The Seller shall comply with all local, State and Federal laws, and rules and regulations.

11.2 This Contract is subject to applicable provisions of Federal, State and Local Laws and Executive Orders requiring affirmative action and equal employment opportunity.

11.3 Safe Working Conditions. The Seller shall maintain safe working conditions during the performance of this Contract. Failure to maintain such conditions constitutes a breach of a material provision of this Contract.

11.4 Seller Indemnification. The Seller shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Seller and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Contract or of the laws. Insofar as the facts or law relating to any claim would preclude the City from being completely indemnified by the Seller, the City shall be partially indemnified by the Seller to the fullest extent permitted by law.

12. PERIOD OF LIMITATION

No action shall lie or be maintained against the City upon any claim arising out of this Contract unless such action be commenced within one (1) year from acceptance of final payment, termination of contract or accrual of cause of action, whichever is earlier.

13. INFRINGEMENT - VENDOR WARRANTY

The Seller shall deliver the Goods specified free from the claim of any third party by way of infringement including but not limited to patent, copyright, trade secrets, or the like. The submission of a bid is deemed to be a warranty by the Seller that Seller has inspected the specifications and has determined that no claim of any third party by way of infringement or otherwise will result from compliance with the specifications. The Seller shall indemnify and hold the City harmless against any such claim regardless of whether or not the infringement arises out of compliance with the specifications. The City may retain any funds due or to become due to the Seller sufficient to meet all claims arising from such infringements. The sufficiency of such amount shall be conclusively determined by the Comptroller.

14. AUDIT BY THE DEPARTMENT, AGENCY AND CITY

14.1 Invoices Subject to Audit. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based, are subject to audit by the Department, Agency and the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred 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.

14.2 Submission of Records. The Seller shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required by the Department, Agency and the Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department, Agency and the Comptroller as they consider necessary.

14.3 Final Payment. The Seller shall not be entitled to final payment under this Contract until all requirements have been satisfactorily met.

15. DEFAULT

Agency Chief Contracting Officer's Right to Declare Seller in Default. In addition to any other remedy provided to the City pursuant to this Contract, the Agency Chief Contracting Officer shall have the right to declare the Seller in default if Seller fails to provide the Goods in accordance with any provisions of
this Contract, including but not limited to the specifications, the delivery schedule, or

other conditions of performance.

16. <u>REGISTRATION OF CONTRACTS</u>

16.1 Office of Comptroller. With the exception of a requirement contract, this Contract shall not be binding or of any force unless it has been registered on the books of the Office of the Comptroller, indicating that there remains unexpended and unapplied a balance of the appropriation or fund applicable hereto sufficient to pay the estimated expense of performing this Contract.

16.2 Requirement Contract. All requirement contracts shall be registered with the Comptroller without an appropriation or identification of a fund applicable thereto.

17. <u>COMMUNICATIONS</u>

All communications addressed to the Seller and delivered at Seller's residence or place of business as given in Seller's bid, or deposited so addressed in a postpaid wrapper in any post office regularly maintained by the Post Office Department, shall be sufficient service thereof upon the Seller for the purposes of this Contract. The place so designated may be changed only by a writing executed and acknowledged by the Seller and delivered to the Agency Chief Contracting Officer. Personal service of communications upon the Seller shall not be precluded or rendered inoperative by any provision of this Contract.

18. <u>INCREASE OR REDUCTION OF QUANTITIES</u>

The City reserves the right, at any time prior to the award of a specific quantity contract, to alter in good faith the quantities listed in the bid documents with the approval of the lowest responsible bidder.

The unit prices shall not vary notwithstanding any increase or reduction in the quantities to be delivered hereunder, and no claims for damages shall be made by or allowed to the Seller by reason of such increase or reduction, except that when a trade discount bid is based on quantities or totals, prices will vary in accordance with the trade discounts bid herein, on which basis this Contract is awarded, or unless otherwise authorized by this Contract.

19. <u>APPROVALS AND CERTIFICATIONS</u>

19.1 Approvals. This Contract shall be neither binding nor effective unless:

(a) Approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975, in the event the Executive Order requires such approval;

(b) Certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan, if required;

19.2 Approvals Not in Lieu of Other Requirements.

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

20. ANTITRUST

The Seller hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust 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 Contract.

21. SEVERABILITY AND HEADINGS

The clauses and provisions of this Contract are intended to be severable. The unconstitutionality or unconscionability of any term, clause or provision shall in no way defeat the effect of any other term, clause or provision. Section and other headings are inserted for convenience only and shall not be used in any way to construe the terms of this Contract.

22. CONFLICT OF LAWS

All disputes which involve this Contract shall be governed by the laws of the State of New York.

23. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

23.1 Law of New York State. This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Seller, and shall be governed by and construed in accordance with the laws of the State of New York.

23.2 Venue in City. The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this agreement and intent, the Seller agrees:

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

(b) A summons in any action arising out of this Contract may issue from any Court of the State of New York having jurisdiction of the subject matter and service of the summons and complaint against the Seller, served as herein provided, shall be deemed personal service upon the Seller within the State of New York if a copy of each is sent by certified mail addressed to the Seller at the place stated in this Contract, or if such address has been changed pursuant to Section 18, to such changed address.

(c) Within thirty (30) days after the date of mailing, a copy of the summons and complaint shall be filed with the clerk of the Court in which the action is pending, along with the mailing receipt issued by the Post Office or the affidavit of any officer or employee of the City showing that the summons and complaint were mailed as herein provided. Service shall be complete ten (10) days after such papers are filed.

(d) With respect to any action between the City and the Seller in New York State Court, the Seller 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.

(e) With respect to any action between the City and the Seller in Federal Court located in New York City, the Seller 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.

(f) If the Seller 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 Seller 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 Seller shall consent to dismiss such action without prejudice and may thereafter re-institute the action in a court of competent jurisdiction in New York City.

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

24. EMERGENCY

24.1 Suspension or Termination. Whenever, in the opinion of the Agency Chief Contracting

Officer, an emergency situation arises during the performance of this Contract, the Agency Chief Contracting Officer may either suspend or terminate this Contract in whole or in part without liability being incurred by either the City or the Seller.

24.2 Right to Purchase Goods. Pursuant to such decision by the Agency Chief Contracting Officer, where this Contract is terminated in whole or in part, the Agency Chief Contracting Officer may purchase such Goods the delivery of which has been cancelled (in replacement for those called for in this Contract).

25. VENDOR INTEGRITY

The Seller agrees that in the event the Seller or any of its principals or officers are indicted for or otherwise charged with any crime or become the subject of any anti-trust action related to the conduct of the business of the Seller or the award of or performance under any contract or agreement with a government entity or if any supervisory employee of the Seller is indicted based upon facts arising out of the award of or affecting performance under this Contract then the Agency Chief Contracting Officer, in his/her sole discretion, may terminate this Contract by notifying Seller, in writing. In the event of termination of this Contract, the Seller shall not be entitled to any damages or payments for Goods not delivered by date of termination.

26. VENDOR GUARANTEE

The Seller guarantees that the equipment offered is standard new equipment, current model of regular stock product with all parts regularly used with the type of equipment offered; also that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Every unit, including any substituted or replacement unit delivered, must be guaranteed against faulty material and workmanship for a period of one year from and after the date the unit is accepted unless otherwise specified. Notwithstanding the foregoing, when the manufacturer's standard guarantee for the unit or any component thereof exceeds one year, the longer guarantee period shall apply to such unit or component thereof delivered under the City's contract. Furthermore, the Seller agrees to extend its warranty period with regard to any unit delivered by the cumulative periods of time, after notification, during which the unit requires servicing or replacement (down time) or is in the possession of the Seller, its agents, officers or employees. If during the regular or extended warranty periods faults develop, the Seller shall promptly repair or upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective goods during the warranty periods shall be borne solely by the Seller, and the City shall in no event be liable or responsible therefor. In the event of failure on the part of the Seller to replace or put in first-class condition any such equipment within thirty (30) calendar days from date of notice the City may have the work done by others and offset the cost against money due, or that may become due to the Seller, or if there be no money due, the Seller agrees to pay the City such cost.

27. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Seller against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this Contract.

28. FUND AVAILABILITY

All contracts awarded by the Agency Chief Contracting Officer shall be executory only to the extent of funds available to each Agency for the purchase of the Goods.

29. ENTIRE AGREEMENT

The written Contract 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 Contract shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

30. PROVISIONS FOR COOPERATIVE PURCHASING ARRANGEMENTS AND FOR EXTENSION OF REQUIREMENT CONTRACTS FOR USAGE BY OTHER GOVERNMENT/QUASI-GOVERNMENTAL AGENCIES

All agencies of the City of New York, the Department of Education, Health and Hospitals Corporation, and the New York City Housing Authority, are entitled to use this contract. In addition, any governmental or quasi-governmental agency that has executed a cooperative purchasing Memorandum of Understanding with the City may utilize this contract with the consent of the vendor provided the agency pays any additional delivery charges outside the metropolitan area as agreed upon with the vendor. These agencies are called "participating agencies." Participating agencies and the contractor understand and acknowledge that the responsibility in regard to performance of any such contract or any condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating agency and the contractor and not the agency letting this contract.

PART IV
SPECIAL CONDITIONS

1. NONDISCRIMINATION

1.1 Executive Order No. 50 (1980). This Contract is subject to the requirements of New York City Charter Chapter 56, §§ 1305 et seq. ("Chapter 56"), Executive Order No. 50 (1980) ("E.O. 50"), and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this Contract, the Seller agrees that it:

(a) will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, affectional preference or citizenship status, with respect to all employment decisions including, but not limited to recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

(b) will not discriminate in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, affectional preference or citizenship status;

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

(d) 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 Chapter 56 and E.O. 50 and the rules and regulations promulgated thereunder; and

(e) will furnish before the contract is awarded all information and reports, including an Employment Report, which are required by Chapter 56, E.O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Division of Labor Services ("DLS"). Copies of all required reports are available upon request from the contracting agency; and

(f) will permit DLS to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) Seller understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Contract and noncompliance with Chapter 56, E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

    (i) disapproval of the Seller;

(ii) suspension or termination of all or parts of this Contract and/or of payments therefor;

(iii) declaring the Seller in default; or

(iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

(h) The Director of DLS may recommend to the contracting agency head that a seller who has repeatedly failed to comply with Chapter 56, E.O. 50 and the rules and regulations promulgated thereunder be declared nonresponsible.

(i) The Seller agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of $100,000 to which it becomes a party unless exempted by Chapter 56, E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

(j) The Seller further agrees that it will refrain from entering into any contract or contract modification subject to Chapter 56, E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of Chapter 56, E.O. 50 and the rules and regulations promulgated thereunder.

1.2 New York Labor Law Section 220-e:

(a) In the hiring of employees for the performance of work under this Contract or any subcontract hereunder, neither the Seller, subcontractor, nor any person acting on behalf of the Seller or subcontractor shall by reason of race, creed, color, disability, 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) Neither the Seller, subcontractor, nor any person acting on his behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, disability, sex or national origin;

(c) There may be deducted from the amount payable to the Seller by the City under this Contract a penalty of fifty (50) dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract; and

(d) This Contract 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 subsection of this Contract.

(e) The aforesaid provisions of this subsection 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.

1.3 New York City Administrative Code Section 6-108:

(a) It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of Goods pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

(b) It shall be unlawful for any person or any servant, agent or employee of any person described in subdivision (a) above to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

(c) Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this Contract.

(d) Any person, or employee, manager or owner of or officer of a firm or corporation who shall violate any of the provisions of this subsection shall, upon conviction thereof, be punished by a fine of not more than one hundred ($100) dollars or by imprisonment for not more than thirty (30) days, or both.

2. <u>LABOR LAW REQUIREMENTS</u>

2.1 Section 6-109 of the Administrative Code of The City of New York.

(a) Section 6-109(a).

(i) Except for those employees whose minimum wage is required to be fixed by Section 220 of the Labor Law of the State of New York, all persons employed by the Seller and any subcontractor in the manufacture or furnishing of supplies, materials or equipment, or the 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 sum mandated by law.

(ii) No part of the work, labor or services will be performed or rendered by the Seller in any plants, factories, buildings or surroundings or under working 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.

(iii) For any breach or violation of any of the representations and stipulations required in any Contract under the provisions of this subsection, the party responsible therefor shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any such Contracts 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 such Contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of such Contract. In addition, the Department of Citywide Administrative Services or any other agency entering into such Contract shall have the right to cancel the Contract for any violation of this subsection and enter into other contracts for the completion of the original Contract, charging any additional cost to the original Seller. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages in violation of the provisions of this subsection shall be held in a special deposit account and shall be paid without interest, on order of the Executive Director for Economic Development, directly to the employees who have been paid less than minimum rates of pay as set forth in such Contracts 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 Seller of the withholding or recovery of such sums by the City.

(b) Section 6-109(b).

The provisions of subdivision (a) of section 6-109 shall not apply to contracts for the furnishing or purchase of agricultural or farm products processed for first sale by the original producers; nor shall subdivision (a) of section 6-109 apply to any work performed on any contract outside of the United States or its territories.

2.2 Worker's Compensation Laws

If this Contract be of such a character that the employees engaged thereon are required to be insured by the provisions of the New York Worker's Compensation Law, and acts amendatory thereto, the same shall be void and of no effect unless the Seller shall secure compensation for the benefit of, and keep insured during the life of this Contract such employees in compliance with the provisions of said law.

3. INVESTIGATIONS

3.1 The parties to this Contract 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.

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

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

3.3 (a) The Agency Chief Contracting Officer 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 than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non-governmental party to the hearing requests an adjournment, the Agency Chief Contracting Officer or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to 3.5 below without the City incurring any penalty or damages for delay or otherwise.

3.4 The penalties which may attach after a final determination by the Agency Chief Contracting Officer or Agency Head may include but shall not exceed:

(a) 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

(b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages in 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.

3.5 The Agency Chief Contracting Officer or Agency Head shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in paragraphs 3.5(a) and 3.5(b) below. S/he may also consider, if relevant and appropriate, the criteria established in paragraphs 3.5(c) and 3.5(d) below in addition to any other information which may be relevant and appropriate:

(a) 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.

(b) 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.

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

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 3.4 above, provided that the party or entity has given actual notice to the Agency Chief Contracting Officer or Agency Head upon the acquisition of the interest, or at the hearing called for in 3.3(a) 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.

3.6 Definitions for purposes of this section shall include the following:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

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

4. <u>TOXIC SUBSTANCES - MATERIAL SAFETY DATA SHEETS</u>

Under the New York State Labor Law, Article 28 (the Right to Know Law), Section 876, any manufacturer, importer, producer or formulator of any substance sold for any use within the state must provide, upon request, specific information on the health hazards and proper handling of such substances. The City of New York, in order to meet its responsibilities under the Law as an employer, requires that manufacturers and suppliers submit such information in the form of a Material Safety Data Sheet for any toxic substance or product containing a toxic substance for any item for which Seller submits a bid. Any questions regarding the toxicity of a substance or the requirements of a Material Data Sheet should be addressed to the New York State Bureau of Toxic Assessment.

5. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

5.1 The Seller agrees that neither the Seller nor any affiliate is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

5.2 Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Seller or an affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his/her option, render forfeit and void this Contract.

5.3 The Seller shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

6. MACBRIDE PRINCIPLES PROVISIONS

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 convenant and represent, as a material condition of their contract, that any business in Northern Ireland operations conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride

Principles of nondiscrimination in employment.

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 conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

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 representations 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, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirement contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

7. RESOLUTION OF DISPUTES

7.1 Except as provided in 7.1(a) and 7.1(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.

7.2 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.

7.3 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.

7.4 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.

7.5 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 7.5(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.

7.6 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; 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.

7.7 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 it 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.

7.8 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.

8. <u>VENDEX QUESTIONNAIRES</u>

Pursuant to Administrative Code §6-116.2 and Section 2-08(e) of the Rules of the Procurement Policy Board (9 RCNY §2-08), 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 subcontracts received from City contractors over the past twelve months, equals or exceeds $100,000, VENDEX questionnaires must be completed and submitted by those bidders selected for award and reviewed by the Department of Investigation prior to award. Any questions concerning this requirement must be submitted to the Agency Chief Contracting Officer or the contact person for this contract.

<u>Failure to submit the required VENDEX questionnaires may result in a finding of non-responsiveness which would preclude a bidder from being awarded this contract</u>.

Pursuant to Section 2-08(e)(8) of the Rules of the Procurement Policy Board, whenever the City Chief Procurement Officer has permitted the filing of some or all of the required information within thirty (30) days after the registration of the contract, the submission of the required information within the required time period is a material term and condition of the contract and the City may terminate the contract without penalty to the City in the event of violation of the condition. The Mayor or his/her designee may determine on the basis of the belatedly filed information that it is in the best interest of the City to terminate the contract. The Comptroller or his/her designee may determine that the belatedly filed information reveals matters which if provided earlier would have provided a basis for an objection to registration of the contract by the Comptroller, and the Mayor or his/her designee may determine that he/she would have agreed with such determination and may terminate the contract. Notwithstanding any provision of this Agreement to the contrary, if the City terminates this Agreement pursuant to the provisions, the City shall have no obligation to pay to the Seller any amounts representing lost or anticipated profits, and shall retain any other rights it has in law or contract to recover monies paid to the Seller prior to termination of this Agreement.

Pursuant to Section 2-08(e)(9) of the Rules of the Procurement Policy Board, whenever a late filing of required VENDEX information, i.e., within thirty (30) days after the registration of the contract, is permitted and the vendor fails to submit the required information within the required time period, that fact shall be communicated to the City Chief Procurement Officer and the Comptroller and shall be included in the VENDEX data base. Until the information has been filed with the City Chief Procurement Officer:

(i) No further contract shall be awarded to that vendor;

(ii) The vendor shall be ineligible to bid or propose or otherwise be awarded a further contract; and

(iii) No payments shall be made to the vendor for performance on that contract unless authorized in writing by the City Chief Procurement Officer.

9. <u>INSTALLATIONS</u>

9.1 Labor Law. The Seller specifically agrees, as required by Labor Law Sections 220 and 220-d, as amended, that with respect to public work contracts:

(a) No laborer, workman, or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any 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 one week, except in the emergencies set forth in the Labor Law.

(b) The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.

(c) The minimum hourly rate of wage to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.

(d) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

(1) The stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended, or

(2) Less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

9.2 Seller's Obligations.

(a) Bidders shall acquaint themselves with conditions to be found at the site and shall assume all responsibility for placing and installing the equipment in the required locations.

(b) 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 of 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.

(c) All materials used in the installation shall be of good quality and shall be free from any and all defects which would mar the appearance of the equipment or render it structurally unsound.

(d) The Seller shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Seller, its employees, officers or agents.

(e) Work shall be performed so as to cause the least inconvenience to the City, and its Agencies and with proper consideration for the rights of other contractors or workers. The Seller shall promptly perform its work and shall coordinate its activities with those of other contractors.

(f) Installation shall include the furnishing of any equipment, rigging and materials required to install or replace the contract item in the proper location. If any alteration, dismantling or excavation, or the like is required to effect installation, the Seller shall thereafter promptly restore the structure or site to its original condition.

(g) Materials, equipment or supplies shall be stored at the site only with the approval of the using Agency and at the Seller's sole risk. In general, such on-site storage should be avoided to prevent possible damage to or loss of the material.

(h) The Seller shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work the premises shall be left in a neat unobstructed condition, the buildings broom clean, and everything in satisfactory repair and order.

10. LAW INSERTED

It is the intent and understanding of the parties to this Contract that each and every provision of law required to be inserted in this Contract shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted herein, and if, through mistake or otherwise, any provision is not inserted herein or is not inserted in correct form, then this Contract 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.

11. BREACH OF CONTRACT

Any breach or violation of any of the subdivisions of this Part IV entitled "Special Conditions" shall be deemed a breach or violation of a material provision of this Contract.

12. PROHIBITION ON PURCHASE OR USE OF TROPICAL HARDWOODS

Tropical hardwoods, as defined in Section 165-b of the State Finance Law shall not be utilized in the performance of this contract except as expressly permitted by the foregoing provisions of law.

PART V
AFFIRMATIONS

THE SELLER AFFIRMS AND DECLARES THAT:

1. NO OTHER PERSON INTERESTED.

The Seller is of lawful age and is the only one interested in this bid and that no other person, firm or corporation has any interest in this bid or in the Contract.

2. CERTIFICATIONS

By submission of its bid, each Seller and each person signing on behalf of any Seller certifies, 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 its knowledge and belief:

2.1 No Collusion. 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 prices with any other bidder or with any competitor;

2.2 Prices Not Disclosed. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Seller and will not knowingly be disclosed by the Seller prior to opening, directly or indirectly, to any other bidder or to any competitor;

2.3 No Attempt to Restrict Competition. No attempt has been made or will be made by the Seller to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

3. NO INTEREST BY CITY OFFICER OR EMPLOYEE.

No member of the Council, 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 Goods for which this bid is submitted or in the performance of this Contract, or in any portion of the profits thereof.

4. COMPLIANCE WITH SECTION 6-109 OF ADMINISTRATIVE CODE

The Seller, as an individual, or as a member, partner, director or officer of the Bidder, if the same be a firm, partnership or corporation, executes this document expressly warranting and representing that the Seller is not disqualified under the provisions of Section 6-109 of the Administrative Code for the award of this Contract and that should this bid be accepted by the City and this Contract awarded to it, it and its subcontractors engaged in the performance of this Contract: (i) will comply with the provisions of Section 6-109 of the Administrative Code of the City of New York in relation to minimum wages; and (ii) have complied with the provisions of said Section 6-109 and said rules and regulations since their respective effective dates insofar as applicable to the Seller and to its subcontractors.

4.1 If there has been a breach or violation of the aforesaid Section 6-109 or of the aforesaid rules and regulations, the Seller must state the time, place and circumstances of such breach or violation on the bid form submitted.

4.2 In the event of breach or violation of any of the foregoing, the Seller may be subject to damages, liquidated or otherwise, and cancellation of this Contract in whole or in part.

5. NON-DISCRIMINATION

The Seller, as an individual, or as a member, partner, director or officer of the bidder, if the same be a firm, partnership or corporation, executes this document expressly warranting and representing that should this bid be accepted by the City and this Contract awarded to it, it and its subcontractors engaged in the performance thereof (i) will comply with the provisions of Section 6-108 of the Administrative Code of the City of New York and the nondiscrimination provisions of Section 220-e of the New York State Labor Law; (ii) have complied with the provisions of the aforesaid laws since their respective effective dates; and (iii) will post notices to be furnished by the City, setting forth the requirements of the aforesaid laws in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of this 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 to be furnished or rendered by the Seller have been finally accepted by the City.

6. NO PAYMENT OR GIFT

The Seller, if an individual bidder, or if the bidder be a firm, partnership or corporation, by executing this document as a member, partner, director or officer and on behalf of such firm, partnership or corporation, represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other Contract between the parties. The Seller makes such representations and warranties to induce the City to enter into this Contract and the City relies upon such representations and warranties in the execution hereof. For breach or violation of such representations or warranties, the Agency Chief Contracting Officer shall have the right to annul this Contract without liability, entitling the City to recover all monies paid hereunder and the Seller shall not make claims for, or be entitled to recover, any sum or sums due under this Contract. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Contract.