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

Part IV Special Conditions

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in the bid cannot be revoked and shall be effective until the award of the Contract, unless the bid is modified or withdrawn by written notice received in the office designated to receive bids before the time and date set for bid opening, or, after the expiration of 45 days from bid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

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.

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

PIN: 8572700018

SPECIAL INSTRUCTION TO BIDDERS
CONTRACT SPECIFIC TERMS AND CONDITIONS

CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
DIVISION OF MUNICIPAL SUPPLY SERVICES
MUNICIPAL BUILDING, NEW YORK, NY 10007

BID NUMBER: 2700018.

BID TITLE: AIR CONDITIONERS (WINDOW, IN-WALL)

ALL INQUIRIES REGARDING THIS BID ARE TO BE DIRECTED TO:
PURCHASING AGENT: JORDAN WILLIAMS AT (212) 386-5012

VENDORS WILL BE SEEN BY APPOINTMENT ONLY

TYPE OF CONTRACT: THIS IS A "C" CONTRACT (REQUIREMENT CONTRACT) AS DEFINED IN THE NEW YORK CITY PURCHASE CONTRACT, PART II, PARAGRAPH 2.8, OR, IF APPLICABLE, THE NEW YORK CITY SERVICE CONTRACT, PART II, PARAGRAPH 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, ONLY THE LOWEST PRICE OFFERING WILL BE CONSIDERED. IF THE PRICE OFFERINGS ARE IDENTICAL, ONLY THE FIRST ITEM LISTED WILL BE CONSIDERED.

PRODUCTS OFFERED SHOULD BE MANUFACTURED 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.

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."

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.

THE CITY MAY, IN IT'S SOLE DISCRETION, DISSAPROVE ANY PROVIDER(S) OF GOODS AND/OR SERVICES USED BY PRIME VENDOR/CONTRACTOR TO FULFILL ANY CONTRACT RESULTING FROM THIS SOLICITATION. AS USED IN THIS SECTION, A "PROVIDER" SHALL INCLUDE, BUT NOT BE LIMITED TO, A SUBCONTRACTOR, A SUPPLIER OF GOODS AND/OR SERVICES, AND THE MANUFACTURER(S) OF ANY GOODS BEING PROCURED UNDER SUCH CONTRACT. A VENDOR WHO IS AWARDED A CONTRACT PURSUANT TO THIS SOLICITATION MAY, AT THE CITY'S OPTION, BE ASKED TO PROVIDE TO THE CITY A LIST OF PROVIDERS AND, FOR EACH PROVIDER, ITS ADDRESS AND THE NAME OF ITS PRINCIPALS.

IN ADDITION, THE VENDOR MAY BE ASKED TO PROVIDE, ANY OTHER INFORMATION DEEMED NECESSARY BY THE CITY TO DETERMINE WHETHER A PROVIDER SHALL BE DISAPPROVED. FURTHERMORE, DURING THE TERM OF SUCH CONTRACT, THE VENDOR MAY BE ASKED TO SUPPLY TO THE CITY ALL SUCH INFORMATION REGARDING ANY ADDITIONAL PROVIDER(S) IT INTENDS TO USE.

THE CITY RESERVES THE RIGHT TO WITHDRAW ANY APPROVAL IT HAS GIVEN, WHERE SUCH WITHDRAWAL OF APPROVAL IS BASED ON INFORMATION RECEIVED SUBSEQUENT TO THE APPROVAL. THE VENDOR MAY NOT USE A PROVIDER THAT HAS BEEN DISAPPROVED BY THE CITY OR WHOSE APPROVAL HAS BEEN WITHDRAWN.

PURSUANT TO PROCUREMENT POLICY BOARD RULE 2-08(F)(2),THE CONTRACTOR WILL BE CHARGED A FEE FOR THE ADMINISTRATION OF THE PASSPORT SYSTEM, INCLUDING THE VENDOR NAME CHECK PROCESS, IF A VENDOR NAME CHECK REVIEW IS REQUIRED TO BE CONDUCTED BY THE DEPARTMENT OF INVESTIGATION. THE CONTRACTOR SHALL ALSO BE REQUIRED TO PAY THE APPLICABLE REQUIRED FEES FOR ANY OF ITS SUB-CONTRACTORS FOR WHICH VENDOR NAME CHECK REVIEWS ARE REQUIRED. THE FEE(S) WILL BE DEDUCTED FROM PAYMENTS MADE TO THE CONTRACTOR 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.

SCOPE/INTENT OF CONTRACT:
THE PURPOSE OF THIS REQUIREMENTS CONTRACT ("RC") IS TO PROCURE AIR CONDITIONERS (WINDOW & IN-WALL TYPES) FOR THE CITY OF NEW YORK. THE SPONSORING AGENCY IS THE DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES ("DCAS").

ALL PRICES MUST BE BASED ON THE BASIS OF F.O.B. DELIVERY POINT, UNLOADED, AND INSIDE. ALL DELIVERY AND HANDLING COSTS MUST BE INCLUDED IN PRICES.

ANTICIPATED PERIOD OF CONTRACT:
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FROM: JANUARY 1,2027
TO: JUNE 30,2030

THIS IS A THREE AND A HALF (3.5) YEAR CONTRACT.

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.

BASIS FOR AWARD:
IN ACCORDANCE WITH THE NEW YORK CITY CHARTER, THE PROCUREMENT POLICY BOARD 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 BIDDER, WHOSE BID MEETS THE SPECIFICATIONS AND REQUIREMENTS SET FORTH IN THIS BID.

NOTE FAILURE TO COMPLETE ITEMIZED PRICING SECTION IN ITS ENTIRETY MAY RESULT IN THE BID BEING CLASSIFIED AS AN INFORMAL BID, AND WILL BE TREATED AS SUCH.

CONTRACT QUANTITIES:
QUANTITIES SPECIFIED HEREIN ARE ESTIMATES BASED ON EXPERIENCE. THE QUANTITIES TO BE ORDERED ARE ONLY THOSE NEEDED BY THE 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.

DELIVERY POINT(S):
DELIVERY SHALL BE MADE TO ANY POINT WITHIN THE CITY OF NEW YORK (AND SURROUNDING AREAS) AS INDICATED ON INDIVIDUAL PURCHASE ORDERS AND/OR SHIPPING INSTRUCTIONS.

INSPECTION OF ALL GOODS SHALL BE MADE BY THE CITY'S REPRESENTATIVE AT THE POINT OF DELIVERY. VENDOR MUST GIVE ADVANCE NOTICE TO THE CITY'S REPRESENTATIVE IN WRITING AS TO WHEN THE GOODS WILL BE READY FOR FINAL INSPECTION.

NO FINAL ACCEPTANCE SHALL BE MADE BY THE CITY, UNLESS SUCH ACCEPTANCE HAS BEEN MADE BY THE CITY'S REPRESENTATIVE AT THE FINAL DELIVERY POINT AND AN OFFICIAL WRITTEN REPORT OF ACCEPTANCE IS ISSUED BY THE CITY OF NEW YORK.

TITLE AND RISK OF LOSS IS VESTED WITH THE VENDOR UNTIL THE GOODS AND SERVICES ARE ACCEPTED BY THE CITY OF NEW YORK.

DELIVERY TERMS:
SUBSEQUENT TO ISSUING OF PURCHASE ORDERS, OR BLANKET ORDERS, THE VENDOR SHALL DELIVER EACH UNIT OF ORDERED ITEMS WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF A WRITTEN NOTICE TO PROCEED FROM AUTHORIZED CITY PERSONNEL.

THE DELIVERY OF ALL ITEMS SHALL BE MADE IN ACCORDANCE WITH INSTRUCTIONS ON THE PURCHASE ORDER FROM THE AGENCY. IF THERE IS A DISCREPANCY ON THE PURCHASE ORDER, IT IS THE VENDOR'S OBLIGATION TO SEEK CLARIFICATION FROM THE ORDERING AGENCY.

PARTIAL DELIVERIES:
PARTIAL DELIVERIES WILL NOT BE ACCEPTED WITHOUT PRIOR AUTHORIZATION FROM THE CITY AGENCY MAKING THE ORDER. IF PARTIAL DELIVERIES WITHOUT AUTHORIZATION ARE ATTEMPTED BY THE VENDOR'S DELIVERY PERSONNEL, THEY WILL BE REJECTED. IF PARTIAL DELIVERIES ARE BY COMMON CARRIER, NO PARTIAL PAYMENT WILL BE MADE TO THE VENDOR.

NOTIFICATION OF DELIVERY:
IT IS THE VENDOR'S RESPONSIBILITY TO NOTIFY THE USING AGENCY OF ANY INTENDED DELIVERY AT LEAST SEVENTY-TWO (72) HOURS PRIOR TO MAKING THE DELIVERY. ATTEMPTS MADE WITHOUT (72) HOURS PRIOR NOTIFICATION MAY BE REJECTED BY THE AGENCY.

IT IS ALSO THE VENDOR'S RESPONSIBILITY TO INQUIRE ABOUT AND ACCOMMODATE EACH INDIVIDUAL AGENCY'S UNIQUE AND SPECIAL SECURITY ARRANGEMENTS WHICH MAY INCLUDE BUT NOT BE LIMITED TO GUARD DOG INSPECTION AND X-RAY SCANNING.

DELIVERY TIME:
UNLESS OTHERWISE STIPULATED IN THIS CONTRACT, DELIVERY SHALL BE MADE BETWEEN 9 A.M. AND 4 P.M., MONDAY TO FRIDAY INCLUSIVE, EXCEPT AS MAY BE OTHERWISE REQUIRED BY THE CITY. THE CITY RESERVES THE RIGHT TO REQUIRE DELIVERY AT TIMES OTHER THAN BETWEEN 9 A.M. AND 4 P.M. 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.

DELIVERY EXPEDITING/EMERGENCY ORDERS:
IF SPECIFICALLY REQUESTED BY THE AGENCY, THE VENDOR MUST BE ABLE TO EXPEDITE/OVERNIGHT AN ORDER. IN THESE CASES, THE SHIPPING PROVIDER UTILIZED FOR THESE ORDERS IS AT THE DISCRETION OF THE VENDOR.

THE ORDERING AGENCY SHALL PAY THE ADDITIONAL SHIPPING COSTS INCURRED FOR EXPEDITED SHIPPING IN THESE CASES. HOWEVER, THESE COSTS MUST BE FAIR, REASONABLE, AND JUSTIFIED BY THE VENDOR.

VENDOR JUSTIFICATION INCLUDES, BUT IS NOT LIMITED TO, RECEIPTS AND QUOTATIONS FROM THE UTILIZED EXPEDITING SHIPPING PROVIDER. THESE DOCUMENTS MUST BE FORWARDED TO THE ORDERING AGENCY, AND ATTACHED TO ALL ASSOCIATED INVOICES.

THE VENDOR IS TO PASS ALONG ANY VOLUME FREIGHT DISCOUNTS TO THE CITY. VENDOR MUST MAKE EVERY EFFORT TO MINIMIZE FREIGHT CHARGES.

THE CITY WILL NOT ASSUME ADDITIONAL FREIGHT CHARGES WITHOUT VERIFIED DOCUMENTATION FROM THE VENDOR.

BLANKET ORDERS:
THIS CONTRACT WILL BE SUBJECT TO THE ISSUANCE OF PURCHASE ORDERS AND/OR BLANKET ORDERS. BLANKET ORDERS WILL INDICATE THE MAXIMUM AMOUNT OF MONEY THE CITY HAS SET ASIDE FOR THE PURCHASE OF PRODUCTS.

SHIPPING INSTRUCTIONS OR STANDARD RELEASES WILL SUBSEQUENTLY BE ISSUED INDICATING THE QUANTITIES AND DELIVERY LOCATIONS.

IT SHALL BE INCUMBENT UPON THE CONTRACTOR NOT TO EXCEED THE AMOUNT OF MONEY AUTHORIZED BY THE BLANKET ORDER.

IF SHIPPING INSTRUCTIONS ARE ISSUED AFTER BLANKET ORDER IS DEPLETED, VENDOR MUST NOTIFY AGENCY AND WITHHOLD SHIPPING PRODUCT UNTIL A NEW ORDER IS ISSUED.

INVOICE(S) MAY BE SENT UPON SHIPPING OF THE PRODUCTS BY THE VENDOR. THE CITY SHALL REMIT PAYMENT FOR GOODS IN ACCORDANCE WITH THE PROMPT PAYMENT PROVISIONS OF THE PROCUREMENT POLICY BOARD RULE, SECTION 4-06.

TIMELY DELIVERIES:
GOODS SUPPLIED UNDER THIS CONTRACT ARE FOR THE SMOOTH OPERATION OF CITY SERVICES. THEREFORE, TIMELY DELIVERIES ARE REQUIRED AND CITY PERSONNEL WILL RIGOROUSLY ENFORCE THE DELIVERY SCHEDULE.

ANY VENDOR WHO FAILS TO DELIVER ON TIME WILL BE SUBJECT TO THE BUY AGAINST PROVISIONS OF THIS CONTRACT. THE CITY WILL BUY THE PRODUCT FROM ANOTHER SOURCE, PAY THE PRICE NECESSARY TO SECURE THE PRODUCT IMMEDIATELY, AND CHARGE THE DIFFERENCE BETWEEN THE NEW COST AND THE CONTRACT PRICE (PLUS AN ADMINISTRATIVE FEE) TO THE VENDOR WHO FAILED TO DELIVER ON TIME.

PACKING:
ALL ITEMS DELIVERED SHALL BE IN MANUFACTURER'S STANDARD PACKING, IN THE ORIGINAL CONTAINERS, WITH PART NUMBER AND QUANTITY PLAINLY MARKED. BULK PACKING IS ACCEPTABLE ONLY WHEN SPECIFIED ON THE ORDER. A PACKING LIST MUST BE FURNISHED WITH ALL DELIVERIES.

PACKAGING INSTRUCTIONS:
PURCHASE ORDER NUMBER MUST APPEAR ON ALL VENDOR INVOICES. PACKING SLIP MUST BE ACCESSIBLE ON THE EXTERIOR OF THE PACKAGING AND MUST HAVE PURCHASE ORDER NUMBER CLEARLY MARKED ON IT. SKIDS AND/OR PALLETS MUST BE PROPERLY WRAPPED TO PROTECT IN TRANSIT. MULTIPLE ITEMS WRAPPED TOGETHER SHALL BE CLEARLY INDICATED ON OUTER WRAPPING.

LITERATURE:
ALL APPLICABLE LITERATURE AND DOCUMENTS ARE TO BE INCLUDED FOR EACH ITEM ORDERED ON INDIVIDUAL PURCHASE ORDERS. SUCH LITERATURE INCLUDES THE FOLLOWING: (OPERATING MANUALS, MAINTENANCE MANUALS, PARTS MANUALS, DIAGRAMS, ETC.).

BE ADVISED:
FOR ACCOUNTING PURPOSES, THE CITY'S FISCAL YEAR CLOSES ON JUNE 30TH OF EACH YEAR. ORDERS PLACED WITHIN THE CURRENT FISCAL YEAR MUST BE DELIVERED ON OR BEFORE JUNE 30TH OF THE SAID YEAR.

IF DELIVERY TIME FRAME DOES NOT ALLOW FOR DELIVERY TO BE COMPLETED ON OR BEFORE JUNE 30TH, THE CONTRACTOR SHALL, WITHIN THREE (3) BUSINESS DAYS OF THE RECEIPT OF PURCHASE ORDER, NOTIFY THE PROCURING AGENCY AND THE OFFICE OF CITYWIDE PROCUREMENT OF SUCH.

WARRRANTY:
MANUFACTURER WARRANTS EQUIPMENT TO BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR A PERIOD OF TWENTY-FOUR (24) MONTHS FROM THE DATE OF DELIVERY UNLESS MANUFACTURER'S WARRANTY EXCEEDS 24 MONTHS, IN WHICH CASE THE CITY WILL ACCEPT THE LONGER WARRANTY. THIS WARRANTY SHALL PROVIDE FOR THE REPAIR OR REPLACEMENT OF EQUIPMENT PROVEN TO HAVE FAILED DUE TO FAULTY MATERIAL OR WORKMANSHIP.

WRITTEN WARRANTY TO BE SUPPLIED WITH BID OR WITHIN TEN (10) DAYS OF NOTIFICATION TO SUPPLY SAME.

INSURANCE:
VENDOR SHALL FURNISH TO THE CITY SATISFACTORY CERTIFICATES OF INSURANCE ISSUED BY THE CARRIER INDICATING THAT THE INSURANCE WILL BE IN EFFECT FOR THE DURATION OF THE CONTRACT.

FOR THE PERIOD OF THE CONTRACT, VENDOR AND/OR MANUFACTURER SHALL MAINTAIN ALL MINIMUM INSURANCE REQUIREMENTS AS DETAILED IN ATTACHED INSURANCE RIDERS.

ITEM DISCONTINUATION:
MANUFACTURER MUST PROVIDE A MINIMUM OF ONE (1) YEAR ADVANCE NOTICE PRIOR TO PRODUCT DISCONTINUATION/OBSOLESCENCE, AND MUST INCLUDE A LAST/LIFETIME BUY ("LTB") OPPORTUNITY.

NOTIFICATION MUST INCLUDE THE FOLLOWING: PRODUCT IDENTIFICATION; LAST ORDER DATE (MIN. 12 MONTHS AFTER NOTIFICATION); AND IDENTIFICATION OF REPLACEMENT PRODUCT, IF APPLICABLE.

SUBSTITUTION:
DURING THE PERIOD OF THE CONTRACT, NO NEW EQUIVALENT PRODUCT MAY BE SUBSTITUTED UNLESS APPROVED BY THE ORDERING AGENCY AND THE OFFICE OF CITYWIDE PROCUREMENT, DCAS, IN WRITING, AND BE SUBMITTED FOR INSPECTION AND APPROVAL.

CONTRACT PRICE - PRICE MODIFICATIONS:
THE FIRST REQUEST FOR PRICE MODIFICATION MAY BE MADE BY THE VENDOR SIX (6) MONTHS FROM THE DATE OF BID OPENING. THEREAFTER, REQUESTS FROM THE VENDOR WILL BE CONSIDERED BY THE CITY TWELVE (12) MONTHS FROM THE PREVIOUS REQUEST, FOR THE REMAINDER OF THE CONTRACT PERIOD.

PRICE DECREASES MUST BE OFFERED BY THE VENDOR AS SOON AS THEY BECOME AVAILABLE ON THE MOST RECENT PUBLISHED US BUREAU OF LABOR STATISTICS PRODUCER PRICE INDEX ("BLS PPI"OR"PPI") OR OTHER INDUSTRY DOCUMENTATION. THE CITY RESERVES THE RIGHT TO IMPLEMENT A PRICE DECREASE UPON NOTIFICATION TO THE VENDOR, IF DOCUMENTATION IS SUBSTANTIATED.

ALL PRICE MODIFICATION REQUESTS MUST INCLUDE DOCUMENTED PROOF TO SUBSTANTIATE THE CHANGE IN PRICE. DOCUMENTATION INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING:

1. MANUFACTURER'S NOTICE OF PRICE INCREASE;
2. DOCUMENTATION OF PREVIOUS YEAR'S PRICES;
3. PROOF THAT THE NEW PRICE LIST IS THE MOST CURRENT INDUSTRY-WIDE USED LIST;
4. BLS PPI CALCULATIONS & DOCUMENTS;
5. US CUSTOMS NOTICES;
6. MATERIAL COST CHANGE DOCUMENTS

THE INCREASE WILL BE ALLOWED FOR THE PRICE OF THE AIR CONDITIONER UNITS ONLY

BLS PPI CALCULATIONS FOR THIS CONTRACT WILL BE MADE UTILIZING THE BLS PPI STATED BELOW. THE CALCULATION WILL BE BASED ON THE PERCENT CHANGE FROM THE BASE DATE TO THE MOST RECENT DATE.

THE BASE DATE 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 ORIGINAL PUBLICATION.

IN THE EVENT THAT IT TAKES LONGER THAN SIX (6) MONTHS FROM BID OPENING TO CONTRACT REGISTRATION, A PRICE ADJUSTMENT REQUEST 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 IS THE PORTION OF THE BID PRICE SUBJECT TO A PRICE INCEASE;
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 PPI: 137.1

ADJUSTED PRICE =
$112+{$100X(137.1-134.3)/134.3} = $114.08

BLS PPI PRICE ADJUSTMENT CALCULATIONS ON THIS CONTRACT WILL BE BASED ON THE FOLLOWING PPI:

PCU333415333415: AIR CONDITIONING, REFRIGERATION AND FORCED AIR HEATING EQUIPMENT MFG

WHEN THE PPI CONFLICTS WITH MANUFACTURER'S MATERIAL COST (AS REFLECTED IN MANUFACTURER NOTICES), THE CITY MAY, AT ITS DISCRETION, ADJUST PRICES TO REFLECT MANUFACTURER INFORMATION.

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 ADJUSTMENT REQUESTS MUST BE SUBMITTED TO DCAS IN WRITING AT LEAST THIRTY (30) DAYS BEFORE THE PROPOSED IMPLEMENTATION DATE. VENDOR MUST CONFIRM RECEIPT OF THE REQUEST. IF APPROVED, A CONTRACT MODIFICATION WILL BE ISSUED DETAILING THE PRICE ADJUSTMENT.

APPROVED PRICE ADJUSTMENTS WILL AFFECT FUTURE ORDERS ONLY. ALL PURCHASE ORDERS THAT HAVE ALREADY BEEN GENERATED WILL REFLECT THE CURRENT PRICE, UNLESS OTHERWISE DETERMINED AT THE DISCRETION OF THE CITY. THIS CONTRACT MAY BE TERMINATED BY THE CITY IN THE EVENT THAT PRICE ADJUSTMENTS DO NOT REFLECT INDUSTRY DOCUMENTATION.

IF SPECIAL CONDITIONS EXIST THAT DEEM ADDITIONAL PRICE ADJUSTMENTS TO BE NECESSARY, THE CITY RESERVES THE RIGHT TO MAKE THIS DETERMINATION AND WILL REQUIRE THE VENDOR TO SUBMIT ADDITIONAL JUSTIFYING DOCUMENTATION.

PRICE ADJUSTMENT IS NOT AUTOMATIC. IT IS THE VENDOR'S RESPONSIBILITY TO INITIATE THE REQUEST. REQUESTS MUST BE SENT TO THE DCAS OCP ASSISTANT COMMISSIONER OF CITYWIDE PROCUREMENT IN WRITING AND INCLUDE JUSTIFICATION DOCUMENTS, AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE VENDOR.

NO PRICE CHANGE WILL BECOME EFFECTIVE UNLESS APPROVED BY THE ASSISTANCE COMMISSIONER OF CITYWIDE PROCUREMENT, OR HIS/HER DESIGNEE.

REQUESTS MUST BE SENT TO THE CITY'S IN WRITING AT THE FOLLOWING ADDRESS:

DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
OFFICE OF CITYWIDE PROCUREMENT
1 CENTRE STREET, 18TH FLOOR
NEW YORK, NY 10007
ATT: ASSISTANT COMMISSIONER OF CITYWIDE PROCUREMENT (RE: BID# .....)

ELECTRONIC REQUESTS MAY ALSO BE CONSIDERED.

QUALIFICATION OF BIDDERS

BIDS WILL BE CONSIDERED ONLY FROM MANUFACTURERS OR THE MANUFACTURER'S AUTHORIZED DISTRIBUTORS WHO ARE QUALIFIED TO SUPPLY AND INSTALL WINDOW, AND IN-WALL AIR CONDITIONER UNITS & ACCESSORIES.

FOR MANUFACTURER'S AUTHORIZED DISTRIBUTORS, THE BIDDER MUST BE THE DIRECT AUTHORIZED DISTRIBUTOR AND CANNOT TRANSFER ANOTHER AUTHORIZED DISTRIBIUTOR'S EXPERIENCE AS THEIR OWN.

ADDITIONAL REQUIREMENTS:
BIDDERS FOR THIS CONTRACT SHOULD BE IN BUSINESS FOR A MINIMUM OF THREE (3) YEARS, PRIOR TO BID OPENING DATE, AS A PRIME OR SUBCONTRACTOR, ACTIVELY SELLING SIMILAR EQUIPMENT & SUPPLIES TO OTHER 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 ORGANIZATIONS CONFIRMING SUCCESSFUL PARTICIPATION.

FOR EACH REFERENCE SUBMITTED TO MEET THE EXPERIENCE REQUIREMENTS SET FORTH ABOVE, THE BIDDER MUST PROVIDE THE FOLLOWING INFORMATION:

(A) NAME OF CONTRACTOR

(B) NAME AND LOCATION OF PROJECT

(C) NAME, TITLE AND TELEPHONE NUMBER OF THE OWNER OR OWNER'S REPRESENTATIVE WHO IS FAMILIAR WITH THE BIDDER'S WORK ON THE PROJECT.

(D) BRIEF DESCRIPTION OF THE WORK COMPLETED

(E) INDICATE WHETHER THE WORK WAS PERFORMED AS A PRIME CONTRACTOR OR A SUBCONTRACTOR. IF A SUBCONTRACTOR, PROVIDE NAME AND CONTACT OF THE PRIME CONTRACTOR.

(F) AMOUNT OF THE CONTRACT OR SUB-CONTRACT

(G) 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.

FAILURE TO COMPLETE AND SUBMIT THE REQUIRED NUMBER OF REFERENCES SEVEN (7) CALENDAR DAYS UPON REQUEST, MAY RENDER A BID NON-RESPONSIVE.

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.

MANUFACTURER'S CERTIFICATE:
THE MANUFACTURER'S CERTIFICATE (CF-07-REV 12/10) SUBMITTED BY THE BIDDER WILL CONSTITUTE PROOF OF AN AGREEMENT WITH THE MANUFACTURER WHOSE PRODUCT THE BIDDER OFFERS THAT SAID BIDDER IS AN AUTHORIZED DISTRIBUTOR OR RESELLER OF ITS PRODUCTS. BIDS WILL BE ACCEPTED ONLY FROM MANUFACTURERS, THEIR AUTHORIZED REPRESENTATIVES, OR THEIR AUTHORIZED DISTRIBUTORS. THE ENCLOSED CF-07-REV 12/10 MUST BE COMPLETED AND SIGNED BY THE MANUFACTURER(S) SPECIFIED IN THIS BID AND SUBMITTED PRIOR TO THE MAKING OF AN AWARD; HOWEVER, BIDDERS ARE ENCOURAGED TO SUBMIT ALL COMPLETED AND SIGNED MANUFACTURERS' CERTIFICATES WITH THEIR BID SOLICITATION.

USAGE REPORTS:
A USAGE REPORT SHOWING AGENCY, ITEM DESCRIPTION, UNIT OF ISSUE, QUANTITY ORDERED AND DOLLAR VALUE OF ALL ITEMS ORDERED IS REQUIRED ON A QUARTERLY BASIS, IF REQUESTED BY THE CITY.

THE FIRST REPORT SHOULD BE DATED THREE (3) MONTHS AFTER THE CONTRACT START DATE, SUBSEQUENT REPORTS ARE DATED EVERY THREE (3) MONTHS THEREAFTER. REPORTS SHOULD COVER THE CURRENT PERIOD AS WELL AS TOTAL CONTRACT PERIOD TO DATE. THE REPORT MAY BE SUBMITTED IN HARD COPY, ON DIGITAL MEDIA, OR VIA E-MAIL TO THE DCAS OCP PROCUREMENT ANALYST ASSIGNED TO THE CONTRACT.

THE REPORT SHALL BE FORMATTED TO INCLUDE: THE CONTRACT NAME, RC NUMBER AND TERM OF THE CONTRACT AT THE TOP. THE REPORT SHALL INDICATE THE PERIOD OF TIME COVERED BY THE REPORT. THE REPORT IS TO BE ORGANIZED TO SHOW AGENCY, ITEM ORDERED, UNIT OF ISSUE, QUANTITY ORDERED AND DOLLAR VALUE.

THE USAGE REPORT SHALL BE SENT TO THE ATTENTION OF THE DCAS OCP PROCUREMENT ANALYST ASSIGNED TO THIS CONTRACT, AT THE FOLLOWING ADDRESS:

CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
OFFICE OF CITYWIDE PROCUREMENT
1 CENTRE STREET, 18TH FLOOR
NEW YORK, NY 10007

* RETURN POLICY *

PRODUCTS RETURNED BECAUSE OF QUALITY PROBLEMS, DUPLICATED SHIPMENTS, OUTDATED PRODUCT, ETC., SHALL BE PICKED UP BY THE CONTRACTOR WITHIN FIVE BUSINESS DAYS AFTER NOTIFICATION WITH NO RESTOCKING CHARGE AND REPLACED WITH SPECIFIED PRODUCTS OR THE AGENCY SHALL BE CREDITED/REFUNDED FOR THE FULL PURCHASE PRICE.

PRODUCTS ORDERED IN ERROR BY AGENCIES MUST BE RETURNED FOR CREDIT WITHIN FIFTEEN DAYS OF RECEIPT. PRODUCTS MUST BE IN RESEALABLE CONDITION (ORIGINAL CONTAINER, UNUSED).

SAMPLES:
THE CITY RESERVES THE RIGHT TO REQUEST SAMPLES OF ANY ITEMS OFFERED IN RESPONSE TO THIS BID SOLICITATION FOR EVALUATION AND TESTING. IF REQUESTED, SUCH SAMPLES SHALL BE FURNISHED WITHIN TEN (10) WORKING DAYS, OR AS STATED IN THE REQUEST. SAMPLES MUST BE SECURELY TAGGED OR LABELLED WITH: BIDDER NAME, MANUFACTURER, MODEL NUMBER, AND BID AND ITEM NUMBER.

SAMPLES SUBMITTED MUST BE THE EXACT ITEM OFFERED AND MUST BE AN EXACT REPRESENTATION OF HOW THE PRODUCT WILL BE DELIVERED TO CITY AGENCIES WITH RESPECT TO QUALITY, PACKAGING AND NUMBER OF UNITS PER CASE.

ENVIRONMENTALLY PREFERABLE PURCHASING:
ALL ITEMS UNDER THIS CONTRACT MUST COMPLY WITH THE APPLICABLE SECTION(S) OF THE NYC MAYOR'S OFFICE OF CONTRACT SERVICES ("MOCS"), ENVIRONMENTALLY PREFERABLE PURCHASING ("EPP"), NYC EPP MINIMUM STANDARDS FOR GOODS.

PLEASE SEE THE NYC MAYOR'S OFFICE OF CONTRACT SERVICES, ENVIRONMENTALLY PREFERABLE PURCHASING ("EPP"), NYC EPP MINIMUM STANDARDS FOR GOODS, SECTION 6-12. ROOM AIR CONDITIONERS FOR MORE INFORMATION.

THIS CONTRACT IS SUBJECT TO ONE OR MORE OF THE FOLLOWING LOCAL LAWS AND ANY RULES ENACTED PURSUANT TO SUCH LOCAL LAWS: LOCAL LAW NUMBER 118 OF 2005, LOCAL LAW NUMBER 119 OF 2005, LOCAL LAW NUMBER 120 OF 2005, LOCAL LAW 108 OF 2021, & LOCAL LAW NUMBER 121 OF 2005, IF APPLICABLE.

THE VENDOR WILL BE REQUIRED TO PROVIDE A REPORT, FOR ANY PERIOD REQUESTED BY AN AGENCY, ON PRODUCTS SPECIFIED BY OR FOR THE CITY THAT APPEAR IN THE NEW YORK CITY EPP MINIMUM STANDARDS FOR GOODS. THE REPORT MUST CONTAIN THE FOLLOWING INFORMATION: AGENCY, ITEM DESCRIPTION, QUANTITY ORDERED AND DOLLAR VALUE OF ALL ITEMS ORDERED OVER THE PERIOD REQUESTED, IF APPLICABLE.

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 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.

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 (FORMERLY KNOWN AS VENDEX) TO BE CONSIDERED FOR AN AWARD. PAPER SUBMISSIONS, INCLUDING CERTIFICATIONS OF NO CHANGE (CNC) TO EXISTING VENDEX SUBMISSIONS, WILL NOT BE ACCEPTED IN LIEU OF COMPLETED ONLINE FILING.

PLEASE VISIT WWW.NYC.GOV/PASSPORT
FOR MORE INFORMATION.

THE MAYORS OFFICE OF CONTRACT SERVICES ("MOCS") MAY REQUEST THAT THE VENDOR START SUBMITTING INVOICES RELATING TO THIS AGREEMENT THROUGH THE CITY'S PASSPORT SYSTEM. UPON RECEIPT OF SUCH REQUEST FROM THE CITY, THE VENDOR AGREES THAT IT WOULD COMMENCE SUBMITTING INVOICES RELATING TO THIS AGREEMENT THROUGH THE PASSPORT SYSTEM. VENDOR TRAINING WILL BE MADE AVAILABLE TO PROCESS INVOICES IN PASSPORT.

M/WBE:
THE CITY HIGHLY ENCOURAGES MINORITY AND/OR WOMEN OWNED BUSINESS ENTERPRISES (M/WBE) TO PARTICIPATE IN THIS BID, AND THE AWARDED VENDOR IS ENCOURAGED TO UTILIZE M/WBE FOR PRODUCT SOURCING AND SERVICES.

QUESTIONS:
ALL QUESTIONS CONCERNING THIS BID SHALL BE IN WRITING AND SENT VIA EMAIL. QUESTIONS MUST BE RECEIVED NO LATER THAN SEVEN (7) BUSINESS DAYS PRIOR TO THE BID OPENING DATE. QUESTIONS RECEIVED AFTER THIS DEADLINE MAY NOT BE ADDRESSED.

PLEASE ADDRESS ALL QUESTIONS TO THE PERSONNEL LISTED UNDER THIS BID IN THE NYC PASSPORT LISTING.

* *
* NOTE *
* THIS BID BOOK IS TO BE RETURNED INTACT. *
PAGES ARE NOT TO BE REMOVED AND SHOULD
* REMAIN IN THE SAME SEQUENCE AS RECEIVED. *
FAILURE TO COMPLETE ALL REQUIRED FORMS
* OR PROVIDE ALL REQUIRED INFORMATION MAY *
DISQUALIFY YOUR BID.
* *

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION

NOTE:
AWARD IS TO BE MADE BY CLASS. BIDDER MUST BID ON ALL ITEMS IN A CLASS UNLESS OTHERWISE SPECIFIED. FAILURE TO BID ALL ITEMS IN A CLASS WILL RENDER THAT CLASS INVALID AND MAY DISQUALIFY THE BID.

CLASS/ZONE AWARD 1

NOTE: ALL AIR CONDITIONER UNITS MUST HAVE A MINIMUM TWENTY-FOUR (24) MONTH MANUFACTURER WARRANTY.

ITEM NUMBER: 1. COMM. C031 05
WINDOW/WALL AIR CONDITIONER, 8,000 BTU, 115 VOLT. 125. EACH $_____ $_____
BID STANDARD: FRIEDRICH # KCVS08B10B OR APPROVED EQUAL.

SALIENT CHARACTERISTICS:
COOLING CAPACITY: 8,000 BTU
VOLTS: 115 VOLT
CEER: 16.0
COOLING WATTS: 370
UL LISTED
ENERGY STAR RATED
ROHS COMPLIANT
LCDI POWER CORD
R-32 REFRIGERANT
WI-FI SMART CONTROL/MONITORING
FAN FUNCTION
VARIABLE SPEED COMPRESSOR

.....
(BRAND NAME OFFERED)

MODEL #.....

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 1.10 COMM. C031 05
WINDOW BRACKET FOR WINDOW/WALL AIR CONDITIONER ABOVE (ITEM 1.00). 25. EACH $_____ $_____

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION

.....
(BRAND NAME OFFERED)

MODEL #.....

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE
ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 1.20 COMM. C031 05
IN-WALL SLEEVE FOR WINDOW/WALL AIR CONDITIONER ABOVE (ITEM 1.00). 25. EACH $_____ $_____

.....
(BRAND NAME OFFERED)

MODEL #.....

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE
ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 2. COMM. C031 05
WINDOW/WALL AIR CONDITIONER, 12,000 BTU, 230 VOLT 200. EACH $_____ $_____
BID STANDARD: FRIEDRICH # KCVS12B30B OR
APPROVED EQUAL.

SALIENT CHARACTERISTICS:
COOLING CAPACITY: 12,000 BTU
VOLTS: 230 VOLT
CEER: 15.0
COOLING WATTS: 624
UL LISTED
ENERGY STAR RATED
ROHS COMPLIANT
LCDI POWER CORD
R-32 REFRIGERANT
WI-FI SMART CONTROL/MONITORING
FAN FUNCTION
VARIABLE SPEED COMPRESSOR

.....
(BRAND NAME OFFERED)

MODEL #.....

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE
ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 2.10 COMM. C031 05
WINDOW BRACKET FOR WINDOW/WALL AIR CONDITIONER ABOVE (ITEM 2.00). 50. EACH $_____ $_____

.....
(BRAND NAME OFFERED)

MODEL #.....

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE
ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 2.20 COMM. C031 05
IN-WALL SLEEVE FOR WINDOW/WALL AIR CONDITIONER ABOVE (ITEM 2.00). 50. EACH $_____ $_____

.....
(BRAND NAME OFFERED)

MODEL #.....

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE
ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 3. COMM. C031 05
WINDOW/WALL AIR CONDITIONER, 23,000 BTU, 230 VOLT 400. EACH $_____ $_____
BID STANDARD: FRIEDRICH # KCVM24B30B OR
APPROVED EQUAL.

SALIENT CHARACTERISTICS:
COOLING CAPACITY: 23,000 BTU
VOLTS: 230 VOLT
CEER: 13.0
COOLING WATTS: 1,349
UL LISTED
ENERGY STAR RATED
ROHS COMPLIANT
LCDI POWER CORD
R-32 REFRIGERANT
WI-FI SMART CONTROL/MONITORING
FAN FUNCTION
VARIABLE SPEED COMPRESSOR

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION
..... (BRAND NAME OFFERED) MODEL #..... BIDDER TO INCLUDE MATERIAL COST: $..... (SEE PRICE ADJUSTMENT CLAUSES) FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.				
ITEM NUMBER: 3.10 WINDOW BRACKET FOR WINDOW/WALL AIR CONDITIONER ABOVE (ITEM 3.00).	50.	EACH	COMM. C031 05 $_____	$_____
..... (BRAND NAME OFFERED) MODEL #..... BIDDER TO INCLUDE MATERIAL COST: $..... (SEE PRICE ADJUSTMENT CLAUSES) FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.				
ITEM NUMBER: 3.20 IN-WALL SLEEVE FOR WINDOW/WALL AIR CONDITIONER ABOVE (ITEM 3.00).	50.	EACH	COMM. C031 05 $_____	$_____
..... (BRAND NAME OFFERED) MODEL #..... BIDDER TO INCLUDE MATERIAL COST: $..... (SEE PRICE ADJUSTMENT CLAUSES) FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.				
ITEM NUMBER: 4. WINDOW/WALL AIR CONDITIONER, 28,000 BTU, 230 VOLT BID STANDARD: FRIEDRICH # KCVL28B30B OR APPROVED EQUAL.	30.	EACH	COMM. C031 05 $_____	$_____

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION

SALIENT CHARACTERISTICS:
COOLING CAPACITY: 28,000 BTU
VOLTS: 230 VOLT
CEER: 13.2
COOLING WATTS: 1,577
UL LISTED
ENERGY STAR RATED
ROHS COMPLIANT
LCDI POWER CORD
R-32 REFRIGERANT
WI-FI SMART CONTROL/MONITORING
FAN FUNCTION
VARIABLE SPEED COMPRESSOR

.....
(BRAND NAME OFFERED)

MODEL #.....

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE
ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 4.10 COMM. C031 05

WINDOW BRACKET FOR WINDOW/WALL AIR CONDITIONER ABOVE (ITEM 4.00).	10.	EACH	$_____	$_____

.....
(BRAND NAME OFFERED)

MODEL #.....

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE
ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 4.20 COMM. C031 05

IN-WALL SLEEVE FOR WINDOW/WALL AIR CONDITIONER ABOVE (ITEM 4.00).	10.	EACH	$_____	$_____

.....
(BRAND NAME OFFERED)

MODEL #.....

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE
ANY FUTURE PRICE ADJUSTMENT.

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION
ITEM NUMBER: 5.			COMM. C031 05	
WINDOW AIR CONDITIONER INSTALLATION.	125.	EACH	$_____	$_____
VENDOR INSTALLATION OF A WINDOW A/C UNIT DURING NORMAL WORKING HOURS (WEEKDAYS, BETWEEN 8A-5P). VENDOR MUST INCLUDE A PRE-INSTALLATION SURVEY OF SITE/LOCATION PRIOR TO INSTALLATION ATTEMPT TO ENSURE PROPER INSTALLATION SUPPLIES. TYPES OF WINDOW INSTALLATIONS MAY INCLUDE, BUT ARE NOT LIMITED TO:(CASEMENT, FACTORY, BASEMENT, HOPPER, RITTER, WINDOWS GREATER THAN 40" IN WIDTH, UPPER INSTALL GREATER THAN 66 INCHES OFF GROUND, UPPER INSTALL GREATER THAN 10 FEET OFF GROUND).				
BIDDER TO INCLUDE MATERIAL COST: $..... (SEE PRICE ADJUSTMENT CLAUSES)				
FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.				
ITEM NUMBER: 6.			COMM. C031 05	
IN-WALL AIR CONDITIONER INSTALLATION	125.	EACH	$_____	$_____
VENDOR INSTALLATION OF AN IN-WALL A/C UNIT DURING NORMAL WORKING HOURS (WEEKDAYS, BETWEEN 8A-5P). VENDOR MUST INCLUDE A PRE-INSTALLATION SURVEY OF SITE/LOCATION PRIOR TO INSTALLATION ATTEMPT TO ENSURE PROPER INSTALLATION SUPPLIES. TYPES OF INSTALLATIONS MAY INCLUDE, BUT ARE NOT LIMITED TO:(UPPER INSTALL GREATER THAN 66 INCHES OFF GROUND, UPPER INSTALL GREATER THAN 10 FEET OFF GROUND).				
BIDDER TO INCLUDE MATERIAL COST: $..... (SEE PRICE ADJUSTMENT CLAUSES)				
FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.				
ITEM NUMBER: 7.			COMM. C031 05	
OFF-HOURS AIR CONDITIONER INSTALLATION	50.	EACH	$_____	$_____
VENDOR ADD-ON COST FOR OFF-HOURS A/C INSTALLATIONS (EITHER TYPE, WINDOW OR IN-WALL) ON WEEKDAYS (5P-8A), WEEKENDS & HOLIDAYS.				
BIDDER TO INCLUDE MATERIAL COST: $..... (SEE PRICE ADJUSTMENT CLAUSES)				
FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.				

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION
ITEM NUMBER: 8.			COMM. C031 05	
UN-INSTALLATION OF EXISTING A/C UNIT	125.	EACH	$_____	$_____

VENDOR TO UN-INSTALL AN EXISTING A/C UNIT AT A CITY SITE/LOCATION DURING NORMAL WORKING HOURS (WEEKDAYS, BETWEEN 8A-5P). TYPES OF UN-INSTALLATION MAY INCLUDE, BUT ARE NOT LIMITED TO (WINDOW TYPES, IN-WALL TYPES, UPPER UN-INSTALLATION GREATER THAN 66 INCHES OFF GROUND, UPPER-UNINSTALLATION GREATER THAN 10 FEET OFF GROUND). VENDOR MUST INCLUDE A PRE-UNINSTALLATION SURVEY OF THE SITE WHERE NECESSARY.

** VENDOR TO SET UNIT ASIDE AT AGENCY DESIGNATED LOCATION UPON UN-INSTALLATION. SEE ITEM 10 FOR ADD-ON COST TO REMOVE/DISPOSE UNIT.

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 9.			COMM. C031 05	
OFF-HOURS UN-INSTALLATION OF EXISTING A/C UNIT	50.	EACH	$_____	$_____

VENDOR TO UN-INSTALL AN EXISTING A/C UNIT AT A CITY SITE/LOCATION DURING OFF-HOURS (WEEKDAYS, BETWEEN 5P-8A; WEEKENDS, HOLIDAYS). TYPES OF UN-INSTALLATION MAY INCLUDE, BUT ARE NOT LIMITED TO (WINDOW TYPES, IN-WALL TYPES, UPPER UN-INSTALLATION GREATER THAN 66 INCHES OFF GROUND, UPPER-UNINSTALLATION GREATER THAN 10 FEET OFF GROUND). VENDOR MUST INCLUDE A PRE-UNINSTALLATION SURVEY OF THE SITE WHERE NECESSARY.

** VENDOR TO SET UNIT ASIDE AT AGENCY DESIGNATED LOCATION UPON UN-INSTALLATION. SEE ITEM 10 FOR ADD-ON COST TO REMOVE/DISPOSE UNIT.

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 10.			COMM. C031 05	
DISPOSAL/REMOVAL OF EXISTING A/C UNIT	50.	EACH	$_____	$_____

VENDOR TO REMOVE AND PROPERLY DISPOSE/RECYCLE EXISTING A/C UNIT FROM A CITY SITE/LOCATION.

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 11. COMM. C031 05

DELIVERY OF AN AIR CONDITIONING UNIT TO A NON-ELEVATOR BUILDING (MORE THAN THREE (3) STORIES/FLOORS). 50. EACH $_____ $_____

ADD-ON COST FOR DELIVERY OF A NEW AIR CONDITIONING UNIT TO A NON-ELEVATOR CITY BUILDING (UNIT COST IS FOR EACH AIR-CONDITIONING UNIT, PER BUILDING STORY/FLOOR ABOVE THE THIRD FLOOR).

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.

ITEM NUMBER: 12. COMM. C031 05

FURNISH/INSTALL AIR CONDITIONER "RITTER" SUPPORT FRAME. 50. EACH $_____ $_____

WHERE REQUIRED BY THE ORDERING AGENCY, THE VENDOR SHALL FURNISH/INSTALL A "RITTER" AIR CONDITIONER SUPPORT FRAME. THIS SHALL INCLUDE THE FOLLOWING:

- FURNISH/INSTALLATION OF "RITTER" FRAME
- SURVEY OF PROPOSED LOCATION/SITE PRIOR TO INSTALLATION
- FRAME SHALL BE MADE FROM 2"X2"X1/8" THICK (8 GAUGE) SQUARE EDGE CORNER, ALUMINUM ANGLE EXTRUSIONS
- TWO (2) ALUMINUM RIVETS PER JOINT, INCLUDING ALL POINTS WHERE 1" ANGLE SIDE STRAPS ARE FASTENED TO THE MAIN FRAME
- LEGS MUST BE USED BETWEEN THE BASE OF THE FRAME AND SILL ON BOTTOM MOUNTS, WHERE THE WINDOW

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION

SILL/LEDGE PROJECT IS 8" OR GREATER
- ALL HORIZONTAL CROSS MEMBERS MUST BE OF SOLID SINGLE PIECE CONSTRUCTION. SECTIONAL PIECING IS NOT ACCEPTABLE.
- PLEXIGLASS (LEXAN) SIDELITE FILLERS MUST BE FASTENED TO THE FRAME WITH RIVETS OR SCREWS
- FRAME SHALL BE PROPERLY FITTED TO THE A/C UNIT DIMENSIONS, ALLOWING A MAXIMUM OF 1/8" CLEARANCE ON ALL SIDES
- ALL EDGES SHALL BE ADEQUATELY CAULKED AND SEALED
- ADDITIONAL WEATHERSTRIPPING SHALL BE INSTALLED WHERE REQUIRED TO MAINTAIN WEATHERPROOFING OF OPENING

BIDDER TO INCLUDE MATERIAL COST: $.....
(SEE PRICE ADJUSTMENT CLAUSES)

FAILURE TO INCLUDE MATERIAL COST WILL PRECLUDE ANY FUTURE PRICE ADJUSTMENT.

TOTAL CLASS OR ZONE AWARD (ITEMS 1.00 THRU 12.00) 1 .....$_____

CASH DISCOUNTS

OFFERS OF CASH DISCOUNTS WILL NOT BE CONSIDERED IN MAKING AN AWARD. PLEASE NOTE BELOW IF YOU OFFER A CASH DISCOUNT AND, IF SO, THE DISCOUNT TERMS.

DISCOUNT
YES ..... NO ..... TERMS ..... % ..... DAYS

Bid Number: B2700018: Air Conditioners (Window, In-Wall)

THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
OFFICE OF CITYWIDE PROCUREMENT

Manufacturer's Certificate

_____ certifies that:

We manufacture the commodities specified in the attached bid document. We manufacture these commodities at the manufacturing plant(s) located at:

_____

_____

_____

_____

FURTHERMORE:

We authorize _____
Name and Address of Firm or Individual

_____

as our distributor to furnish our products, as listed in the attached bid document. We agree to supply said distributor/individual such quantities of our products as may be required.

Date: _____

_____
Manufacturer

_____
Signature

_____
Print Name

_____
Title

_____
Official Contact E-Mail or Phone

* **NOTE:** Although this Certificate is not required to be completed by bid submission, it is required prior to awarding of this Contract.

6-12. Room Air Conditioners

Covered Products:

This specification shall cover room air conditioners.

Definition:

Casement-only: A room air conditioner designed for mounting in a casementwindow with an encased assembly with a width of 14.8 inches or less and a height of 11.2 inches or less.

Casement-slider: A room air conditioner with an encased assembly designed formounting in a sliding or casement window with a width of 15.5 inches or less.

Reverse Cycle: The heating function found in certain room air conditioner models.

Room Air Conditioner (RAC): A device that is used to control temperature and humidity in an enclosed space. This definition applies to window RACs, through-the-wall RACs, casement and casement slider RACs, and reverse cycle RACs (or heat pump RACs.) This definition does not apply to a packaged terminal air conditioner (PTAC).

Standard:

Energy Star: All energy-using products for which the United States Environmental Protection Agency and the United States Department of Energy have developed energy efficiency standards for compliance with the Energy Starprogram shall be ENERGY STAR labeled.

ATT: BIDDER

PLEASE RETAIN ON FILE

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. BIDS

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 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. REGISTRATION OF CONTRACTS

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. COMMUNICATIONS

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. INCREASE OR REDUCTION OF QUANTITIES

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. APPROVALS AND CERTIFICATIONS

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. LABOR LAW REQUIREMENTS

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. TOXIC SUBSTANCES - MATERIAL SAFETY DATA SHEETS

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. VENDEX QUESTIONNAIRES

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.

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.

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. INSTALLATIONS

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.

INSURANCE RIDER FOR AGREEMENTS USING THE CITYWIDE PURCHASE CONTRACT

The following terms ("Rider") supplement those of the Citywide Purchase Contract. Defined terms shall take the same meaning as indicated in the Citywide Purchase Contract.

Section 1 Agreement to Insure

The Bidder shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Contract, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Rider. Wherever this Rider requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Bidder can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 2 Workers' Compensation, Disability Benefits, and Employers' Liability Insurance

A. The Bidder shall maintain workers' compensation insurance, employers' liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Contract

B. Within 10 Days of award of this Contract or as otherwise specified by the Department, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Bidder shall submit proof of Bidder's workers' compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers' Compensation Insurance*;

2. Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;

3. Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;

4. Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;

5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;

6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;

7. Form CE-200 – *Affidavit of Exemption*;

8. Other forms approved by the New York State Workers' Compensation Board; or

9. Other proof of insurance in a form acceptable to the City.

Section 3 Other Insurance

A. *Commercial General Liability Insurance.* The Bidder shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Contract. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims-made." Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the Contract, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Contract, the Bidder shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. Professional Liability Insurance.

1. If indicated in Schedule A, the Bidder shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Contract. The policy or policies shall cover the liability assumed by the Bidder under this Contract arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Bidder or anyone employed by the Bidder.

2. All subcontractors of the Bidder providing professional services under this Contract for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Bidder shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Bidder shall purchase extended

reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

D. *Crime Insurance.* If indicated in Schedule A, the Bidder shall maintain crime insurance during the term of the Contract in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Bidder as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Bidder shall maintain cyber liability insurance covering losses arising from operations under this Contract in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Bidder's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Bidder shall provide such other types of insurance in the amounts specified in Schedule A.

Section 4 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by this Rider must:

1. be provided by companies that may lawfully issue such policies;

2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and

3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

B. The Bidder shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

C. There shall be no self-insurance program, including a self-insurance retention, exceeding $10,000.00, with regard to any insurance required under Section 3 of this Rider unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Rider, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Bidder as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 5 Proof of Insurance

A. For each policy required under this Rider, the Bidder shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Contract. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Rider) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 3 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 5(A).

C. The Bidder shall provide the City with a copy of any policy required under this Rider upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Bidder from maintaining policies consistent with all provisions of this Rider (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Bidder receives notice, from an insurance company or other person, that any insurance policy required under this Rider shall expire or be cancelled or terminated for any reason, the Bidder shall immediately forward a copy of such notice to both the address referred to in Schedule A and to the New York City Comptroller, Attn: Office of Contract

Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 6 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by this Rider, the Bidder shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Bidder may not be covered under such policy if this Contract requires that the City be an additional insured (for example, where one of Bidder's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Bidder shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Bidder fails to comply with the requirements of this paragraph, the Bidder shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Bidder's failure to maintain any of the insurance required by this Rider shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Rider shall not relieve the Bidder or its subcontractors of any liability under this Contract, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Contract or Law.

D. With respect to insurance required by Section 3 and Schedule A (but not including professional liability/errors and omissions insurance), the Bidder waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Rider (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Bidder and/or its subcontractors in the performance of this Contract.

If Bidder uses any subcontractors who will make or participate in any delivery under this Contract, Bidder shall require that those subcontractors obtain insurance meeting the

requirements of this Rider. In the event the Bidder requires any subcontractor to maintain insurance with regard to any operations under this Contract and requires such subcontractor to list the Bidder as an additional insured under such insurance, the Bidder shall ensure that such entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

SCHEDULE A

Types of Insurance (per Rider in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
■ Workers' Compensation § 2 ■ Disability Benefits Insurance § 2 ■ Employers' Liability § 2	Statutory amounts.
■ Commercial General Liability § 3(A)	$1,000,000.00 per occurrence $1,000,000.00 personal & advertising injury (unless waived in writing by the Department) $2,000,000.00 aggregate $2,000,000 products/completed operations Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____
■ Commercial Auto Liability § 3(B)	$1,000,000.00 per accident combined single limit If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90
☐ Professional Liability/Errors & Omissions § 3(C)	$1,000,000.00 per claim

☐ Crime Insurance § 3(D)	$_____Employee Theft/Dishonesty $_____Computer Fraud $_____Funds Transfer Fraud $_____Client Coverage $_____Forgery or Alteration $_____Inside the Premises (theft of money and securities) $_____Inside the Premises (robbery or safe burglary of other property) $_____Outside the Premises $_____ Money Orders and Counterfeit Money City of New York is a loss payee as its interests may appear
☐ CyberLiability Insurance §3(E)	*[If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]*
☐ [OTHER]	*[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]*
☐ [OTHER]	*[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]*
Notice	
Department's Mailing Address and Email Address for Notices	NYC DCAS, Office of Citywide Procurement 1 Centre Street, 18th Floor South New York, NY 10007 Att: Bid/Contract # [____] - [Vendor Name] Insurance

Bidder's Mailing Address and Email Address for Notices	

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

(1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

(2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

_____
[Name of broker or agent (typewritten)]

_____
[Address of broker or agent (typewritten)]

_____
[Email address of broker or agent (typewritten)]

_____
[Phone number/Fax number of broker or agent (typewritten)]

_____
[Signature of authorized official, broker, or agent]

_____
[Name and title of authorized official, broker, or agent (typewritten)]

State of .....)
) ss.:
County of .....)

Sworn to before me this_____day of_____20___

_____
NOTARY PUBLIC FOR THE STATE OF _____