

PLEASE RETAIN ON FILE

**THE NEW YORK CITY SERVICE 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, except that "Using Agency" refers to the particular department, board, bureau, office or other City subdivision for which services are to be procured.
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. "Contractor," "Supplier," "Vendor" or "Bidder" is the person, firm or corporation awarded this Contract and obligated to furnish the Services to the City in accordance with all the terms and conditions of the Contract.
11. "Date of Contract Award" shall be the date of Notice of Award, if issued, or otherwise the perforated date of Purchase Order.
12. "Department" means the Department of Citywide Administrative Services, City of New York.
13. "Division" means the Division of Municipal Supply Services, Department of Citywide Administrative Services.
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. "Services" are the subject matter of this contract and include but are not limited to any labor, services or other work necessary for performance of the Contract, and shall include the furnishing of any parts, equipment, rigging and materials required to perform the service.

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

PART II
STANDARD INSTRUCTIONS TO BIDDERS

THESE INSTRUCTIONS ARE STANDARD FOR ALL CONTRACTS FOR SERVICES 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, specifications, 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 Contractor 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 Contractor. If Contractor fails to bring any conflict, error, or omission to the attention of the Agency Chief Contracting Officer prior to submission of its bid, Contractor shall be deemed to have contracted to supply the services and perform the work in the most expensive manner using only the best services, supplies 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 Services, (2) Specifications, (3) Special Instructions, (4) General Conditions and (5) Standard Instructions.

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, 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 Manufacturers' Warranties and Guaranties. Unless otherwise indicated in this Contract, the Contractor shall obtain all manufacturers' warranties and guaranties of all equipment and materials required by this Contract in the name of the City of New York and shall timely deliver same to the City.
- 2.6 Additional Services Units and Service Sites. The number of units to be serviced and the service 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 services to be provided by number of units to be serviced; 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. The Service points are limited to those indicated in the Bid Book unless modified by mutual agreement of the parties.
 - (b) Type "C" Contract. (Requirement Contract). A requirement contract is a contract for an indefinite amount of services to be provided at specified times or as ordered, that establishes unit prices, usually of a fixed price type. Generally, an approximate amount or the best information available as to amount is stated in the solicitation. The contract may provide a minimum amount of services the City is obligated to order and may also provide for a maximum amount provision that limits the City's obligation to order. Those City agencies purchasing off requirement contracts shall issue purchase orders directly and shall be responsible for payment thereof. The Agency Chief Contracting Officer shall have the option to renew this Contract for a period of two (2) years.
- 2.7 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 items offered, 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 services are to be performed.
- (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 Services on which it bids in the manner and time specified. It also represents and shall furnish evidence that it possesses all necessary licenses, permits or certificates, required to carry on the business of furnishing the Services 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 Contractor 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 Services 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 and may find that this constitutes grounds for a finding of non-responsibility.

3.3 Examination before Award. The City reserves the right, before making an award, to conduct examinations to determine whether or not the Services 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 Services 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 next 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 Contractor from fulfilling all requirements and conditions of this Contract.

4. SPECIFICATIONS FOR EQUIPMENT AND SUPPLIES

4.1 Specifications and "Or Equal" Bidding. Written specifications may be used to describe the equipment, parts or supplies or like items required for Services. 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 equipment, parts or supplies or like items required for Services. If bidding on the 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 equipment parts on supplies or like items for services 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 equipment, parts or supplies or like items for Services 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 items indicated or any equal thereto in all essential respects as shall be determined by the City, except when items are purchased according to an Acceptable Brands List or are indicated as brand specific only, no equal will be accepted.

- 4.2 **Unused Items.** Unless specifically noted in this Contract, all items for Services must be new and unused, however, bidders 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, welfare or safety requirements or product specifications contained herein.
- 4.3 **Submission of Descriptive Literature.** Descriptive literature shall not be submitted unless expressly requested elsewhere in the contract or contract documents. Any unsolicited descriptive literature which is submitted shall not be examined and shall not be deemed to vary any of the provisions of this contract. When descriptive literature is requested from the Bidder or required by this Contract, it 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.

Descriptive literature requested by the City shall be submitted free of charge to the 18th floor, Municipal Building, New York, New York 10007, unless some other place is indicated.

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 may be construed as incomplete and may be rejected. The Agency Chief Contracting Officer 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 5.7 below.

(b) **Mistakes Discovered Before Award**

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 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.

5.5 Alternate Services. A Bidder may not bid multiple 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.

5.6 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.

5.7 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.

5.8 **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.

5.9 **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.

5.10 **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 Contractor shall perform the Services described in the specifications attached to this Agreement in the manner and within the time herein specified. The Contractor shall accept as full compensation therefor the sums set forth opposite the respective Services called for in the Bid Book, which sums are amounts at which the Contract was awarded to the Contractor at the letting thereof.

2. TIME OF PERFORMANCE

2.1 The period of performance of this agreement is specified in the "B" pages of the bid documents. Time is of the essence in the performance of this contract.

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

- (a) If the performance of the Contractor is delayed by an act or omission of the City, the Contractor 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 Contractor.
- (b) If the performance of the Contractor 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 Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, 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 Contractor, 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 Contractor. Should such excusable delay inconvenience the City by creating an emergency thus necessitating the purchase of all or any part of the contract Services 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 Services elsewhere without liability to the Contractor. To the

extent such purchases are made, the City shall be relieved of the obligation to purchase the Services from the Contractor and the Contractor shall be relieved of the obligation to furnish such Services to the City.

- 2.3 **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.
- 2.4 **Non-Waiver.** The performance of any services 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 performance of any unperformed service 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 **Scope of Work**

- (a) The Contractor shall perform the Services and do all other things incidental thereto.
- (b) The Contractor shall furnish all of the labor, machinery, equipment, materials and supplies necessary to perform all of the work and services required for the complete and prompt execution of everything described or reasonably implied from, and in such manner as to comply with the conditions and specifications as set forth in the Contract Documents.
- (c) The work required for the performance of this Contract includes any work required to make the end result operative. If equipment, materials and/or methods are not detailed in drawings or specifications but are required as industry standards for operative purposes, the Contractor will, at no additional cost to the City, provide such equipment, materials, and/or methods, of a quality which meets both industry standards and is consistent with other work under the Contract.

- 3.2 **Competent Workers.** The Contractor shall employ only competent workers in the performance of this Contract. The Contractor'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 Contractor 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 Contractor, or may, upon notification to the Contractor, consider the Contractor in default.
- 3.3 **Unsatisfactory Performance.** If, in the opinion of the Agency Chief Contracting Officer, either the Contractor's performance is unsatisfactory or is not being carried out with due diligence, the Contractor shall immediately remedy such performance. Failure of the Contractor to so conform will be deemed a material breach of this Contract.
- 3.4 **Substitution of Items.** In the event a specified manufacturer's commodity listed in the Contractor's bid document becomes unavailable or cannot be supplied to the City by the Contractor for any reason (except as provided for in 2.2(b) above), a product deemed by the Agency Chief Contracting Officer to be the equal of the specified commodity must be substituted by the Contractor at no additional cost or expense to the City.
- 3.5 **Purchase Order Binding When Mailed.** Unless terminated or cancelled by the Agency Chief Contracting Officer pursuant to the authority vested in him/her, purchase or work orders shall be effective and binding upon the Contractor when placed in the mail prior to the termination of the contract period, addressed to the Contractor at the address shown on the award.
- 3.6 **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. **INSPECTION AND RISK OF LOSS**

- 4.1 The City shall have the right to inspect the goods and equipment upon which Services are performed. The City reserves the right to inspect the plant of the Contractor or its subcontractor(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

Services performed which are not in fact free from patent or latent defects, or of the Contractor's obligation to perform Services according to specifications.

4.2 The Contractor agrees that the work shall be in every respect at the risk of the Contractor until completed and accepted by the City.

4.3 Protection of City Property

(a) The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement; and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agents or other engaged by the Contractor as expert, consultant, specialist or subcontractor hereunder.

(b) In the event that any such City property is lost or damaged, except for normal wear and tear, then the City shall have the right to withhold further payments hereunder for the purpose of set-off, in sufficient sums to cover such loss of damage.

(c) The Contractor agrees to indemnify the City and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any such City property described in subsection a above.

(d) The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

5. NON-PERFORMANCE AND REJECTIONS

5.1 Rejected Services. The City may withhold or revoke acceptance of or reject any Services which are found, upon examination, not to have been performed in conformance with the terms of this Contract. Notice of rejection will be in writing.

5.2 Labels. Any parts and equipment furnished under this contract 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 parts or equipment furnished under this Contract.

5.3 Liquidated Damages - Delayed or Defaulted Performance.

- (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 provisions of subsection 5.4 hereinbelow are invoked, the liquidated damages will be assessed as provided therein and will be calculated from the original performance due date to the date performance is due from the new Contractor.

5.4 Damages Due City Where Replacement Contract is Necessary.

- (a) If the Contractor fails to perform in accordance with this Contract, the Agency Chief Contracting Officer may obtain such Services or any part thereof from other sources with or without public letting, as s/he may deem advisable, and, with no obligation to Contractor to mitigate damages. If the price paid in obtaining the Services 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 Contractor. If such price is less, the Contractor shall have no claim to the difference, but the reletting cost and the liquidated damages will become charges against the Contractor.
- (b) The reletting cost is hereby determined to be two hundred and fifty (\$250) dollars.

5.5 Collection of Charges. All charges becoming due under the provisions of subsection 5.3 and 5.4 hereinabove shall be deducted from current obligations that are due or may become due to the Contractor. In the event that collection is not made as provided above, the Contractor shall pay to the City on demand the amount of such charges.

6. INDEPENDENT CONTRACTOR STATUS

6.1 The Contractor and the Department agree that the Contractor is an independent contractor, and not an employee of the Department or the City of New York, and that in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City of New York, or of any department, agency or

unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City of New York, including, but not limited to, Worker's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

6.2 Employees

- (a) All experts or consultants or employees employed by the Contractor to perform work under this Agreement are neither employees of the City nor under contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Contract. Nothing in this Contract shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes or governmental assessments of any nature including but not limited to unemployment insurance, worker's compensation, disability benefits and social security.
- (b) The Contractor shall be solely responsible for the safety and protection of all of its employees. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damage to any property sustained during its operations and work on the project under this agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors.
- (c) In performing the Services under this Contract, the Contractor is solely responsible for necessary and adequate Worker's Compensation insurance, personal, injury and property damages insurance, and any personnel employed by the Contractor to perform services under this Contract are not and shall not become employees, agents or servants of the City because of the performance of such Services.

7. PAYMENTS

7.1 The City agrees to pay and the Contractor agrees to accept, as full payment for the complete and satisfactory performance of the services required herein, an amount not to exceed the value as stated on a direct purchase order issued by a Using Agency, such amount being based upon the Contractor's Bid for the work or services required as set forth in the Bid section of the bid book and in the case where such bid is a unit price, upon the quantity, volume, amount or period to be required multiplied by such unit Bid Price. Any such estimated quantity, volume, amount or period of work or services or materials is an estimate based upon experience. The City shall neither be required to order any quantity or amount or period thereof, nor shall it be limited by any such estimate, but the quantity or amount or period ordered and paid for shall be that which is actually required by the City and provided by the Contractor. Those City agencies purchasing off requirement contracts shall issue purchase orders directly and shall be responsible for payment thereof.

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) Proper invoices, when submitted, will be payable within thirty (30) days after either receipt of invoice(s) or acceptance of the Services, whichever date is later. When periodic services are performed 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 Services, whichever date is latest.
- (c) 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, or Using Agency, if so delegated. 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.
- (d) Any claim by or on behalf of the City against the Contractor may be deducted by the City from any money due the Contractor. If no such deduction or only a partial deduction is made in such fashion the Contractor 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 are 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 Using Agency shall substitute for the Invoice Received/Acceptance Date (IRA Date).

8. FINAL PAYMENT-ESTOPPEL

- 8.1 Acceptance by Contractor is Release. Except for the Contractor's right to claim any sums retained by the City under the maintenance or guarantee provisions of this Contract, the acceptance by the Contractor, or any person claiming under Contractor, 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 Contractor, 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 nature of the Services performed by the Contractor, 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 Services is untrue or incorrect, or improperly made in any particular, or that the Services or any part thereof performed by the Contractor do not conform to this Contract. The City shall have the right to demand and recover from the Contractor such damages as it may suffer by reason of Contractor'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 Services performed and accepted.
- 8.4 **Statement of Claim.** Contractor, 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. Contractors 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 contractor 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 AND SUBCONTRACTING

- 10.1 **Written Consent Required.** The Contractor 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 Contractor 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 Contractor 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 Contractor for the benefit of its creditors made pursuant to the statutes of the State of New York.
- 10.3 **Subcontracting.** The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Contract, without the prior written approval of the Department.

11. COMPLIANCE WITH LAWS AND INDEMNIFICATION

- 11.1 **Compliance with Laws.** The Contractor shall comply with all local, State and Federal laws, and rules and regulations.
- 11.2 **This Contract is subject to applicable provisions of Federal, State and Local Laws and Executive Orders requiring affirmative action and equal employment opportunity.**
- 11.3 **Safe Working Conditions.** The Contractor shall maintain safe working conditions during the performance of this Contract and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

Failure to maintain such conditions constitutes a breach of a material provision of this Contract.

11.4 **Contractor Indemnification.** The Contractor shall indemnify and hold the City harmless from all damages and costs of every nature to which the City may be subjected by reason of all claims arising out of or in any way related to this Contract including injury or alleged injury to the person or property of another, resulting or alleged as resulting from the negligence of the Contractor, its employees, agents, subcontractors or assigns in the performance of this Contract. Until all claims for damages shall have been settled or otherwise disposed of, and evidence to that affect furnished to the Comptroller, any or all of the monies due or to become due under this Contract may at the Comptroller's option be retained by the City in an amount sufficient to meet the Contractor's obligations of indemnification. The sufficiency of such amount shall be conclusively determined by the Comptroller.

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 - CONTRACTOR WARRANTY

The Contractor shall perform the Services 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 Contractor that Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor in default if Contractor fails to provide the Services in accordance with any provisions of this Contract, including but not limited to the specifications, the performance 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 Contractor and delivered at Contractor's residence or place of business as given in Contractor'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 Contractor for the purposes of this Contract. The place so designated may be changed only by a writing executed and acknowledged by the Contractor and delivered to the Agency Chief Contracting Officer. Personal service of communications upon the Contractor 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 amount of services 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 amount of services to be performed hereunder, and no claims for damages shall be made by or allowed to the Contractor by reason of such increase or reduction.

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 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 of New York or of the United States relating to the particular services 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 Contractor, 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 Contractor agrees:

(a) If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever the Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing 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 Contractor, served as herein provided, shall be deemed personal service upon the Contractor within the State of New York if a copy of each is sent by certified mail addressed to the Contractor 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 Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.
- (e) With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
- (f) If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter 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 Contractor.

24.2 **Right to Obtain Services.** 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 Services the performance of which has been cancelled (in replacement for those called for in this Contract).

25. CONTRACTOR INTEGRITY

The Contractor agrees that in the event the Contractor 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 Contractor or the award of or performance under any contract or agreement with a government entity or if any supervisory employee of the Contractor 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 Contractor, in writing. In the event of termination of this Contract, the Contractor shall not be entitled to any damages or payments for Services not performed by date of termination.

26. PARTS GUARANTEE

The Contractor guarantees that any parts and equipment furnished under this contract are 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 Contractor 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 Contractor, its agents, officers or employees. If during the regular or extended warranty periods faults

develop, the Contractor 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 Contractor, and the City shall in no event be liable or responsible therefor. In the event of failure on the part of the Contractor 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 Contractor, or if there be no money due, the Contractor agrees to pay the City such cost.

27. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

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 Services.

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 Contractor provided the participating agency pays any additional delivery charges outside the metropolitan area as agreed upon with the Contractor. These agencies are called "participating

agencies." Participating agencies and the Contractor acknowledge and agree 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.

31. BID, PERFORMANCE AND PAYMENT SECURITY

31.1 Bid Security - When required, each bid must be accompanied by bid security in an amount and type specified in the "B" pages of the Bid documents. The bid security shall assure the City of New York of the adherence of the bidder to its proposal, the execution of the Contract, and the furnishing of Performance and Payment Bonds by the bidder, if required, if his proposal is accepted. Bid Security shall be returned to the bidder as follows:

- (1) Within ten (10) days after the bid opening, the Comptroller will be notified to return the deposits of all but the three (3) lowest bidders. Within five (5) days after the award, the Comptroller will be notified to return the deposits of the remaining two unsuccessful bidders.
- (2) Within five (5) days after the execution of the Contract and acceptance of the Contractor's bonds, the Comptroller will be notified to return the bid security of the successful bidder.
- (3) Where all bids are rejected, the Comptroller will be notified to return the deposit of the three (3) lowest bidders at the time of rejection.

31.2 Performance and Payment Security - When required, Performance and Payment Security must be provided in an amount and type specified in the "B" pages of the Bid documents. The performance and payment security shall be delivered by the contractor prior to or at the time of execution of the Contract. If a contractor fails to deliver the required performance and payment security, the award shall be rescinded, its bid security shall be enforced, and an award of contract may be made to the next lowest responsible and responsive bidder, or the contract may be rebid.

31.3 Acceptable Types of Security - Acceptable types of security for bids, performance, and payment shall be limited to the following:

- (1) a one-time bond in a form satisfactory to the City;
- (2) a bank certified check or money order;

- (3) obligations of the City of New York; or
- (4) other financial instruments as determined by the Office of Construction in consultation with the Comptroller.

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

- 31.4 Form of Bonds - Security provided in the form of bonds must be in form prescribed by the City of New York. Such bonds must have as surety thereunder such surety company or companies as are approved by the City of New York and authorized to do business in the State of New York. Premiums for any required bonds must be included in the base bid.
- 31.5 Power of Attorney - Attorneys-in-fact who sign bid, performance, or payment bonds must file with each bond a certified copy of their power of attorney to sign said bonds.

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, including but not limited to, Chapter 56, §§ 1305 et seq. ("Chapter 56"), Executive Order No. 50 (April 25, 1980) ("E.O. 50"), and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this Contract, the Contractor 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 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 or citizenship status;
- (c) will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship 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) Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of 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 Contractor;
 - (ii) suspension or termination of all or parts of this Contract and/or of payments therefor;
 - (iii) declaring the Contractor 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 Contractor who has repeatedly failed to comply with Chapter 56, E.O. 50 and the rules and regulations promulgated thereunder be declared nonresponsible.
- (i) The Contractor 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 Contractor 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 contractor 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 Contractor, subcontractor, nor any person acting on behalf of the Contractor 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 Contractor, 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 Contractor 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 Contractor 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 Contractor 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 Contractor. 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 Contractor 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 Contractor 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 Services 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 Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit 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 Contractor 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 Contractor agrees that neither the Contractor 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 Contractor 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 Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

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 covenant 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 its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

- (d) **CDRB Determination.** Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
- (e) **Notification of CDRB Decision.** The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the vendor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.
- (f) **Finality of CDRB Decision.** The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with Section 4-09 of the PPB Rules.

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 Contractor 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 Contractor 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 Contractor 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 contractor;
- (ii) The contractor shall be ineligible to bid or propose or otherwise be awarded a further contract; and
- (iii) No payments shall be made to the contractor for performance on that contract unless authorized in writing by the City Chief Procurement Officer.

9. INSTALLATIONS

9.1 Labor Law. The Contractor 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 Contractor'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 Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, 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 Contractor 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 Contractor 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 Contractor's sole risk. In general, such on-site storage should be avoided to prevent possible damage to or loss of the material.
- (h) The Contractor 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.

9.3 Notice of Labor Disputes.

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

10. BUILDING SERVICE CONTRACTS

10.1 Labor Law. The Contractor specifically agrees, as required by Labor Law Sections 231-233 and 237, that with respect to contracts for building service work:

10.2 Prevailing Wage and Supplements (Sec. 231 - Labor Law)

- (a) The wages which the Contractor shall pay for a legal day's work and supplements to be provided to building service employees, as defined in Section 230 of the Labor Law, employed upon the whole or part of the building service work contemplated by this contract, shall not be less than the prevailing rate of wages and any supplements required to be ascertained and determined by the Comptroller as set forth in a schedule of wage rates which is included as part of the invitation for bids documents.
- (b) No later than the first day upon which work on this contract is to commence, the Contractor shall post in a prominent and accessible place on the site of work a legible statement of the wages to be paid to the employees for the building service work contemplated.
- (c) An apprenticeship in a craft or trade may be permitted to work at a wage lower than that established for the journeyman in such craft or trade only if all of the following conditions are met:

- (1) such apprentice has been individually registered in an apprenticeship program which is duly registered with the New York State Industrial Commissioner in conformity with Article 23 of the Labor Law;
- (2) such apprentice's registration occurred prior to his/her employment as an apprentice on such craft or trade service work; and
- (3) written proof of such individual registration is submitted to the Agency prior to such apprentice's employment as an apprentice. The proof submitted shall include evidence of the appropriate ratios and apprentice's wage rates. In no event shall the ratio of apprentice to journeyman employed on such service work to be greater than the lesser of the following ratios:
 - (a) the ratio permitted in the apprenticeship program approved by the industrial commissioner, or
 - (b) the ratio prevailing in the locality where the service work will be performed.
- (d) The obligation of the contractor to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Comptroller.

10.3 Overtime (Sec. 232 - Labor Law)

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

10.4 Record Keeping (Sec. 233 - Labor Law)

- (a) The contractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by it as true, under penalties of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which he/she was employed, and the wages paid.

- (b) Where the wages paid include sums which are not paid directly to the employee weekly and which are expended for supplements, the records shall include the hourly payment on behalf of such employees, the supplement for which such payment has been made, the name and address of the person to whom such payment has been made. In all cases the Contractor shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and list of all persons for whom such payments are made.
- (c) The records required herein shall be kept on the site of the work during all of the time that work hereunder is being performed. Upon a formal order of the City, the Contractor shall produce within 5 days on the site of work, such records subscribed and affirmed by it as true under the penalties of perjury.

10.5 Certification of Wage Amounts (Sec. 237 - Labor Law)

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

11. 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.

12. 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.

13. PROHIBITION ON 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 CONTRACTOR AFFIRMS AND DECLARES THAT:

1. NO OTHER PERSON INTERESTED.

The Contractor 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 Contractor and each person signing on behalf of any Contractor 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 Contractor and will not knowingly be disclosed by the Contractor 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 Contractor 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 Services 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 Contractor, 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 Contractor 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 Contractor 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 Contractor 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 Contractor may be subject to damages, liquidated or otherwise, and cancellation of this Contract in whole or in part.

5. NON-DISCRIMINATION

The Contractor, 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 Contractor have been finally accepted by the City.

6. NO PAYMENT OR GIFT

The Contractor, 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 Contractor 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 Contractor 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.

