



Bill de Blasio  
Mayor

**Department of  
Youth & Community  
Development**

Bill Chong  
Commissioner

**ADDENDUM #1**

**August 21, 2014**

**Re:** Schools Out NYC: Out-Of-School Time Middle School Expansion  
Technical Assistance (TA) Services  
Request for Proposals (RFP) PIN: 26014P0005

Dear Prospective Proposer:

Pursuant to Sections 3-02 (i) and 3-03 (f) (2) of the Procurement Policy Board (PPB) Rules, the Department of Youth and Community Development (DYCD) is issuing **Addendum #1 to Schools Out NYC: Out-Of-School Time Middle School Expansion Technical Assistance (TA) Services Request For Proposals (RFP)**  
PIN: 26014P0005

**I. ADDENDUM ITEMS**

1. **Section I, Timetable, page 4.** The due date for submission of proposals in response to this RFP is extended to **2 p.m. on September 2, 2014,**
2. **Section III, Scope of Services of the RFP, page 10, b. Design of the TA Services.** The paragraph immediately preceding the heading “Service Option 1- Organizational Development” is **deleted and replaced with the following:**

All vendor staff whether employees, **sub-contractors, or consultants** would provide services in a manner that is sensitive to the backgrounds and cultures of the SONYC contractors and the communities they serve.

3. **Section III, Scope of Services of the RFP, page 11, Service Option 1 – Organizational Development.** The list of bulleted points that follow the words, “Examples of common organizational and programmatic challenges that demand consistent approaches” is **deleted and replaced with the following list of points:**
  - Managing growth due to the expansion of programs and funding for both new and existing SONYC program providers; helping teams or organizations with the structural and emotional challenges likely to arise during the transition.
  - Leadership development, strategic planning, data driven, results-oriented decision-making
  - Relationships among employees (trust, cooperation, collaboration)
  - Succession planning when executive directors and other key staff leave or retire, promoting continuity by engaging the board of directors
  - Building organizational capacity through constructive partnerships with other organizations to share back-office expenses and administrative functions.

4. **Section III, Scope of Services of the RFP, page 13, D. Participation by Minority Owned and Women Owned Business Enterprises in City Procurement.** In the third line of the first paragraph below the heading, the reference to Attachment 4.

Attachment 4 is deleted and replaced the words "Attachment 3"

5. **Section IV, Format and Content of the Proposal, Instructions, page 13.** The second sentence is deleted and replaced with the following sentence:

Proposals must be typed in **12 point font and double-spaced** and printed on both sides of 8 ½" X 11" paper.

## II. CLARIFICATIONS

1. **Section II, page 6, B. TA Service Options, 2<sup>nd</sup> bullet.** Organizations that provide direct services under a SONYC or DYCD OST elementary or high school contract or subcontract (now known as "COMPASS" programs) are not eligible to receive an award through the RFP. Nevertheless, they can be subcontractors to a TA vendor, provided all the conditions relating to subcontracts are met. In no circumstances, however, would they be allowed to provide TA services to the SONYC or DYCD COMPASS programs that their own organization operates.

2. **Section II, page 6, C. Contract Term and D. Anticipated Annual Funding.**

The anticipated funding in each year of the contract will be as follows:

	October 1, 2014 - June 30, 2015	July 1, 2015 - June 30, 2016
Organizational Development	\$400,000	\$400, 000
Fiscal Management	\$300,000	\$300,000

3. **Section III, page 8 B. Department Assumptions Regarding Vendor Approach.** The assumptions set out in the RFP will not affect a proposer's eligibility to respond to the solicitation, but the extent to which the proposer demonstrates that it meets the assumptions listed will have a bearing on the evaluation of the proposal.

  
**Renise Ferguson**  
**Deputy Agency Chief Contracting Officer**



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**Department of  
Youth & Community  
Development**

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Commissioner

**SCHOOLS OUT NYC: OUT-OF-SCHOOL TIME MIDDLE SCHOOL EXPANSION  
TECHNICAL ASSISTANCE (TA) SERVICES  
REQUEST FOR PROPOSALS (RFP) PIN: 26014P0005**

**RFP RELEASE DATE:** August 4, 2014  
**DEADLINE FOR PROPOSALS:** August 26, 2014  
**RETURN TO:** Office of Contract Procurement  
Department of Youth and Community Development  
156 William Street, 2<sup>nd</sup> Floor  
New York, New York 10038

**ATTENTION:** Wendy Johnson  
Deputy Agency Chief Contracting Officer

**PRE-PROPOSAL CONFERENCE:**  
**Date:** August 18, 2014  
**Time:** 2:00PM  
**Location:** Department of Youth  
and Community Development  
156 William Street, 2<sup>nd</sup> Floor  
New York, New York 10038

**This Request for Proposals (RFP) must be obtained directly from the Department of Youth and Community Development (DYCD) in person or by downloading it from DYCD’s Web site, [www.nyc.gov/dycd](http://www.nyc.gov/dycd). If you obtained a copy of this RFP from any other source, you are not registered as a potential proposer and will not receive addenda DYCD may issue after release of this RFP, which may affect the requirements and/or terms of the RFP.**



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**THE CITY OF NEW YORK  
DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT**

**TECHNICAL ASSISTANCE SERVICES  
PIN: 26014P0005**

**TABLE OF CONTENTS**

<b>SECTION I</b>	<b>Timetable</b>	<b>4</b>
<b>SECTION II</b>	<b>Summary of the Request For Proposals</b>	<b>5</b>
<b>SECTION III</b>	<b>Scope of Services</b>	<b>8</b>
<b>SECTION IV</b>	<b>Format and Content of the Proposal</b>	<b>13</b>
<b>SECTION V</b>	<b>Proposal Evaluation and Contract Award Procedures</b>	<b>18</b>
<b>SECTION VI</b>	<b>General Information to Proposers</b>	<b>19</b>
<b>APPENDIX</b>	<b>Common Fiscal Issues and Key Financial Ratios for CBOs</b>	<b>21</b>
 <b><u>ATTACHMENTS</u></b>		
<b>ATTACHMENT 1</b>	<b>Proposal Summary Form</b>	<b>22</b>
<b>ATTACHMENT 2</b>	<b>Notice to All Prospective Contractors Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement</b>	<b>23</b>
<b>ATTACHMENT 3</b>	<b>Schedule B– M/WBE Utilization Plan</b>	<b>31</b>
<b>ATTACHMENT 4</b>	<b>Corporate Governance Certification</b>	<b>32</b>
<b>ATTACHMENT 5</b>	<b>Whistleblower Protection Expansion Act Rider</b>	<b>34</b>
<b>ATTACHMENT 6</b>	<b>Iran Divestment Act Compliance Rider and Bidder’s Certification of Compliance</b>	<b>36</b>
<b>ATTACHMENT 7</b>	<b>Acknowledgment of Addenda</b>	<b>38</b>
<b>ATTACHMENT 8</b>	<b>Doing Business Data Form</b>	<b>39</b>
<b>ATTACHMENT 9</b>	<b>Subcontracting Compliance Notice</b>	<b>40</b>
<b>ATTACHMENT 10</b>	<b>General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services</b>	<b>41</b>

## **AUTHORIZED AGENCY CONTACT PERSONS**

The authorized agency contact persons for all matters concerning this RFP are:

### **Procurement:**

Wendy Johnson  
Deputy Agency Chief Contracting Officer  
Department of Youth and Community Development  
156 William Street, 2<sup>nd</sup> Floor  
New York, New York 10038

E-mail: [RFPquestions@dycd.nyc.gov](mailto:RFPquestions@dycd.nyc.gov)

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### **NOTE ON E-MAIL INQUIRIES: Proposers must enter “TA RFP” in the subject line of their email message.**

The Department of Youth and Community Development (DYCD) cannot guarantee a timely response to phoned-in and written questions regarding this RFP that are received less than one week prior to the RFP due date.

Proposers should note that any telephone or written response that may constitute a change to the RFP will not be binding unless DYCD subsequently issues such a change as a written addendum to the RFP.

**SECTION I - TIMETABLE**

**B. Release Date: August 4, 2014**

**C. Pre-proposal Conference:**

**Date: August 18, 2014**  
**Time: 2:00PM**  
**Location: Department of Youth and Community Development**  
**156 William Street, 2<sup>nd</sup> Floor**  
**New York, New York 10038**

Attendance by proposers is optional but recommended by DYCD.

**C. Proposal Due Date, Time, and Location:**

**Date: August 26, 2014**  
**Time: 2:00pm**  
**Location: Hand-deliver proposals to: Office of Contract Procurement**  
**Attention: Wendy Johnson**  
**Deputy Agency Chief Contracting Officer**  
**156 William Street, 2<sup>nd</sup> Floor**  
**New York, New York 10038**

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

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

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

**D. Anticipated Contract Start Date: October 1, 2014**

## **SECTION II - SUMMARY OF THE REQUEST FOR PROPOSALS**

### **A. Purpose of the RFP**

Through this Request for Proposals (RFP), the Department of Youth and Community Development (DYCD) is seeking appropriately qualified vendors to provide technical assistance (TA) to DYCD-funded not-for-profit organizations that operate Out-of-School Time (OST) programs for middle school youth, hereafter referred to as “School’s Out NYC (SONYC)”<sup>1</sup> programs. The RFP has two service options, one focusing on organizational development and the other on fiscal management. Contracts for both service options will be for a period of 21 months, starting October 1, 2014.

One of the first acts of Mayor de Blasio’s administration was the launch of a bold initiative to expand afterschool programs for middle school youth in New York City (City). This comprises significant funding to support approximately **271** new SONYC programs located in public schools currently lacking comprehensive afterschool services for middle school youth, starting September 2014; funding to support a substantial increase in required hours of programming for existing OST middle school programs; and funding for additional SONYC programs in non-public schools and other settings, starting January 2015.

The purpose of the RFP is to provide TA services that support effective implementation of DYCD-funded SONYC programs, including programs under existing contracts that are subject to new requirements. This notable investment in TA reflects the expansion of SONYC programs, the agency’s past experience of common challenges faced by many of its contractors serving middle school youth, and emerging research on issues relating to the administrative capacity of organizations providing afterschool services.<sup>2</sup>

Through this initiative, which includes funding for evaluation in addition to technical assistance and direct programming, the City aims to expand opportunities for students to build the social and emotional and academic skills they need to stay on track throughout the middle school years. The SONYC model requires that school principals and program providers work collaboratively in order to help children find pathways to success. Research shows that effective afterschool programs can help increase the likelihood that all New York City students - regardless of family income or neighborhood - are college ready by the time they graduate from high school, and, thereby, contribute to a reduction in the persistent achievement gap among income and racial groups.

The TA services funded through the RFP will be expected to support both organizational and programmatic infrastructure. This is in line with studies highlighting the importance of strengthening management capacity, especially in the context of organizational growth. In these circumstances, certain issues can become critical. For example, when contractors begin to operate programs at multiple sites, they need to consider how to prevent the isolation of program directors from the organization’s headquarters, ensure that their fiscal units are adequately staffed, assess the true costs of operating all their programs, and effectively manage cash flow.

Vendors will be expected to utilize the modality (or combination of modalities) best suited to the challenges facing contractors. Anticipated modalities include organizational consultations, train-the-trainer workshops, on-site coaching, and peer exchange. However, DYCD will consider other modalities, especially those designed to effectively deliver TA services to larger groups of contractors. To determine the precise mix of TA services to

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<sup>1</sup> DYCD has renamed its OST programs for middle school youth “School’s Out NYC” (SONYC) programs. The new name emerged from youth focus groups and an on-line competition open to New York City school students.

<sup>2</sup> See for example, Administrative Management Capacity in Out-of-School Time Organizations: An Exploratory Study. John Summers and Lana Price (2008). This study, funded by the Wallace Foundation, can be accessed via the following web link:

<http://www.wallacefoundation.org/knowledge-center/after-school/financial-management-for-nonprofits/Pages/Administrative-Management-Capacity-in-Out-of-School-Time-Organizations.aspx>.

be offered to contractors, DYCD will identify priorities and encourage service designs that make optimal use of available resources. For each TA intervention or project, vendors will be expected to articulate short-term outcomes and related deliverables so that both DYCD and the vendor can monitor and assess the benefit of the services delivered.

In all its efforts, DYCD embraces a strength-based approach to TA. Vendors, DYCD program staff and direct service contractors would function as a community of learners founded on trust, mutual commitment, and high standards of accountability. Accordingly, TA vendors are expected to work with DYCD and its contractors to build a collaborative learning network and enhance delivery systems for the benefit of SONYC program participants.

Capacity-building efforts undertaken by DYCD such as *Strengthening Our Core*<sup>3</sup> highlighted the importance of leadership development and helping supervisors implement continuous quality improvement practices. Promising strategies used by the agency in recent years include training cohorts of supervisors (for example, on how to effectively observe staff and communicate feedback), providing organizational leaders with networking and peer-learning opportunities, and intensive training for small action-learning teams comprised of staff at all organizational levels. Follow-up services that incorporate on-site coaching has also been effective, increasing the likelihood that staff will adopt techniques learned during a TA intervention.

## **B. TA Service Options**

This RFP comprises the two service options: Organizational Development and Fiscal Management. These are described below in Section III - Scope of Services.

- **Proposers may propose to provide TA services under both service options. However, a separate and complete proposal must be submitted for each one.** If a proposer submits proposals under both service options and becomes eligible for more than one award, DYCD reserves the right to determine whether one or two contracts will be awarded, based on the proposer's demonstrated organizational capability and the best interests of the City.
- **Organizations that provide direct services under a SONYC or DYCD OST elementary or high school contract or subcontract will not be eligible to receive an award through this RFP.**

## **C. Contract Term**

It is anticipated that the term of the contracts awarded from this RFP will be **21 months**, starting **October 1, 2014 and ending June 30, 2016**. The first year of the contract would comprise 9 months, (October 1, 2014 to June 30, 2015) and the second year would comprise 12 months (July 1, 2015 to June 30, 2016).

## **D. Anticipated Annual Funding**

It is anticipated that the total annual funding for contracts awarded from this RFP will be **\$700,000** per fiscal year (FY15 and FY16) divided between the two service options as follows:

- Organizational Development: **\$400,000**
- Fiscal Management: **\$300,000**

## **E. Anticipated Payment Structure**

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<sup>3</sup> *Strengthening Our Core* was a pilot initiative designed to improve the organizational capacity of nonprofits operating the DYCD Out-of-School Time (OST) programs. See [http://www.policystudies.com/\\_policystudies.com/files/Strengthening\\_Our\\_Core\\_Research\\_Brief\\_FINAL.pdf](http://www.policystudies.com/_policystudies.com/files/Strengthening_Our_Core_Research_Brief_FINAL.pdf)

The anticipated payment structure for contracts awarded from this RFP will be based on a Full Day Equivalent (FDE) rate representing seven hours of consulting time. All expenses related to the delivery of TA services would be covered by FDEs. The FDE should account for equipment and training materials, travel, space costs, pre-service assessments, preparation for training or consulting sessions, conducting consultations and workshops, and follow-up activities.

Under each service option, the maximum FDE rate that DYCD will pay is **\$1,500. Payments will be linked to specific deliverables and short-term outcomes as determined by DYCD.** Vendors will be responsible for certifying that the work has been completed in accordance with work plans and that the short-term outcomes have been achieved.

However, the Agency will consider proposals to structure payments in a different manner and reserves the right to select any payment structure that is in the City's best interest.

## **F. Subcontractors and Consultants**

Subcontracting and consultancy arrangements designed to complement the vendor's expertise and experience is allowed, subject to the following conditions:

- Subcontractors would have proven track records as providers of TA in the relevant service option, as well as *current capacity* to deliver such services in all the modalities for which they would be engaged (see below under Assumptions Regarding Vendor Approach – Assessment/Modalities on page of the RFP). They will also have demonstrated experience and ability to undertake pre-service organizational assessments and to define and track outcomes in TA services.
- All subcontractors and subcontracts would be subject to DYCD approval before finalization of work plans.
- Vendors would not allow any TA services to be performed by entities for which there is no DYCD-approved subcontract.
- Vendors would be allowed to subcontract **up to 65** percent of the value of the DYCD contract but would not be permitted to award more than **50** percent of the contract value to any single subcontractor.

Consultants may be used, subject to the following conditions:

- Consultants would have relevant experience as providers of the TA services for which they are hired.
- All consultants would be subject to DYCD approval before work plans are finalized.

## SECTION III - SCOPE OF SERVICES

### A. Goals for this RFP

- Increase the capacity of contractors to achieve DYCD's goals for SONYC middle school programs and fulfill all contractual obligations.
- Increase the capacity of supervisors and senior leaders to build knowledge and skills among front-line program staff.
- Increase the consistency and effectiveness of management and supervision practices in the areas of organizational development and fiscal accountability.
- Foster continuous quality improvement by promoting data-driven, results-oriented management and decision-making practices among DYCD SONYC middle school program contractors.
- Help contractors manage growth successfully.

### B. Department Assumptions Regarding Vendor Approach

DYCD's assumptions regarding the approach most likely to achieve the goals set out above are as follows:

#### 1. Experience

- The vendor would have as its primary mission the delivery of TA services to not-for-profit organizations operating afterschool programs or an existing specialist unit within its organization that undertakes this work.
- The vendor and all key staff assigned to the contract, including consultants, would have **at least five years** of demonstrated successful experience delivering TA services similar to those required under the service option to which the proposal applies.
- Staff assigned to the DYCD contract, whether employees or consultants of the vendor or any subcontractor, would have demonstrated expertise in delivering TA to not-for-profit after-school providers in the area of the relevant competition.
- The vendor would have experience conducting pre-service assessments of TA needs.
- The vendor would have an effective process for managing TA or professional development projects, including selection of staff/consultants for individual projects, coordination with key stakeholders, monitoring service delivery, systems for capturing outcomes and participant feedback, and protocols for continuous quality improvement.
- The vendor would have experience providing TA follow-up services.
- The vendor would have experience conducting short-term outcomes evaluations.
- The vendor would have experience in all the principal modalities referred to in this RFP and any alternative approaches proposed under the relevant service option.

#### 2. Organizational Capability

DYCD's assumptions regarding the vendor organization are as follows:

- The vendor would be fiscally sound and capable of managing the services outlined below.
- The vendor would have the capacity to integrate the proposed services into its schedule of operations.
- The vendor would have effective client management and quality assurance processes.
- The vendor would have the capacity to leverage resources or use its existing relations within the TA field to enhance service delivery.

- The vendor would have the capacity to undertake successful joint efforts with other organizations and agencies providing TA services similar to those set out in Section III – Scope of Services of the RFP to which its proposal relates.
- The vendor would have a computer system that employs hierarchical password protection to define and restrict access to specified users.
- The vendor would provide professional development to its staff/consultants to promote high quality services.
- The vendor would provide a facility, accessible by public transportation and adequate in size and design for the training and convening activities to be conducted there.
- The vendor would have site control of a training facility by the contract start date and for the duration of the contract term.
- The vendor would have adequate and appropriate technology and equipment to conduct trainings and presentations and to disseminate information, as necessary.

### 3. Approach

TA services would be tailored to the needs of not-for-profit contractors receiving the services and would include four key components: *assessment, intervention, follow-up services, and short-term outcome evaluation.*

#### a. TA Service Components

##### i. Assessment

Assessment would be comprised of site visits, pre-tests before trainings, interviews with staff to establish needs and priorities, and/or conferences with providers to identify general/common needs. The assessment would inform the work plan that would specify and justify the proposed modality/modalities selected to address the identified organizational challenges. It would also articulate measurable, short-term goals, describe the proposed TA activities, delineate responsibilities between the contractor and the vendor in relation to specified outcomes, identify the level(s) or type(s) of contractor staff targeted, state the names and qualifications of vendor staff to be assigned to the work, describe follow-up activities, identify tools to be used to assess the impact of the services in each modality, and provide a budget with the projected number of FDEs.

##### ii. TA Interventions

- TA interventions would be tailored to the needs of the DYCD SONYC middle school program contractors and use modalities that effectively and efficiently achieve the desired outcomes. Principal modalities anticipated by this RFP are:
  - sequenced train-the trainer workshops;
  - on-site coaching;
  - peer exchanges and similar approaches designed to foster peer support networks, and
  - organizational consultations.

However, DYCD would be open to other approaches and best practices, especially innovative modalities shown to be effective with large groups of contractors.

- The TA vendor would aim to strengthen the capacity of DYCD SONYC program supervisors and senior staff to successfully implement and manage programs.
- The TA vendor would be expected to address challenges faced by organizations with multiple DYCD contracts, including managing growth and ensuring quality across different sites.

- All interventions would have clearly defined outcomes. The vendor would set and monitor progress towards short-term goals, and adjust strategies in response to changing needs.
- The TA vendor would be expected to deliver services in a manner that reflects the principles of adult learning. These were pioneered in the 1970s and 1980s by Malcolm Knowles and led to the development of numerous resources on adult education and self-directed learning.

*iii. Follow-up Services*

Most TA interventions would include follow-up services that create further opportunities for reflection and practicing newly acquired skills, both of which play a vital role in raising program quality. The form of follow-up services would vary and could include onsite coaching, phone and e-mail exchanges, webinars, and phone conferencing. Follow-up services provide contractors with additional support and establish how well supervisors, senior managers and other staff were actually able to utilize what they learned through the TA intervention.

*iv. Evaluation of Short-Term Outcomes*

The outcomes for which the vendor will be held accountable will vary according to the services and interventions provided. Every intervention undertaken by the vendor would have explicit short-term outcomes that would be included in its work plan. Achievement of these outcomes would be included in the vendor’s monthly report to DYCD.

In evaluating short-term outcomes, the vendor would conduct follow-up surveys, phone interviews, or other methods of follow-up with the target organization in order to assess utilization of the vendor’s services and the impact of the chosen intervention.

Examples of short-term outcomes include:

- Development of an improvement plan by the organization’s leadership
- Reduced turnover among front-line staff
- Learning and utilization of new budgeting skills by the participants.

**b. Design of the TA Services**

The TA services would be designed to fit the SONYC programs and the DYCD oversight infrastructure. Accordingly, the vendor would be familiar with:

- The SONYC program model as outlined in the recently released “OST Middle School Expansion” RFP ([http://www.nyc.gov/html/dycd/html/resources/contracting\\_rfp\\_2014.shtml](http://www.nyc.gov/html/dycd/html/resources/contracting_rfp_2014.shtml))
- The DYCD Program Quality Monitoring Tool (PQMT), which is currently being revised. The revised PQMT will be available by October 1, 2014.

All vendor staff whether employees or consultations would provide services in a manner that is sensitive to the backgrounds and cultures of the SONYC contractors and the communities they serve.

**Service Option 1 - Organizational Development**

TA services for organizational development would comprise deliberate planned, efforts to increase the effectiveness and efficiency of the DYCD contractors. The primary purpose would be to equip organizational leaders and managers with the knowledge and skills needed to

successfully implement SONYC programs, ensure delivery of high quality services, and enable contractors to fulfill their obligations under DYCD contracts. In all cases, the TA vendor's aim would be to help contractors:

- Sustain and build on the knowledge and skills learned during TA interventions,
- Establish systematic approaches and processes to achieve consistency in response to common organizational challenges
- Develop a culture of continuous quality improvement.

The vendor would meet with staff from the DYCD Capacity Building and DYCD SONYC Units to review the portfolio of direct service contractors, work scopes, proposed activity schedules for the purpose of identifying priorities and initial TA needs. Examples of common organizational and programmatic challenges that demand consistent approaches include the following:

- Staff recruitment/retention strategies, onboarding of new staff, effective staff supervision, training, and performance feedback/tracking<sup>4</sup>
- Recruitment/retention of SONYC program participants
- School partnerships with SONYC program providers
- Parent engagement strategies
- Leadership development, strategic planning, data-driven, results-oriented decision-making

### **Service Option 2 - Fiscal Management**

Adoption of sound fiscal management practices is critical to the ability of contractors to deliver quality services and effectively manage organizational growth. The purpose of the Fiscal Management TA services funded through this RFP is to raise the fiscal management capacity of contractors providing the SONYC programs (for example, forecasting, including multiple staff in budgeting, or true cost allocation) and help them fulfill their financial obligations under the DYCD contracts and comply with all applicable laws and regulations. Accordingly, the TA vendor would be familiar with the issues summarized in the Appendix (“Common Fiscal Issues Among DYCD-Funded Organizations”) and the critical elements of DYCD’s fiscal management rules, guidelines, and procedures for contracted service providers as prescribed in the DYCD Fiscal Manual.<sup>5</sup>

The fiscal management TA services are expected to fall into two broad categories. First, there would be services whose purpose is to help program directors with little or no training in budget management to comply with all the requirements of the DYCD reporting and financial reimbursement system. Second, there would be services designed to raise capacity, especially among small to medium-sized contractors, to understand and adopt sound fiscal management practices. In many cases, these would be designed for organizations experiencing growth (for example, where a contractor has moved from reliance on a single funding source, such as a foundation, to a situation where it has multiple funding sources and provides services under multiple government contracts).

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<sup>4</sup> The TA vendor would be expected to help SONYC program supervisors develop the competencies documented in the DYCD *Core Competencies for Supervisors of Youth Work Professionals*. See [http://www.nyc.gov/html/dycd/downloads/pdf/Supervisor\\_Core\\_Competencies-full\\_document.pdf](http://www.nyc.gov/html/dycd/downloads/pdf/Supervisor_Core_Competencies-full_document.pdf)

<sup>5</sup> See links to the Fiscal Manual at [http://www.nyc.gov/html/dycd/downloads/pdf/FY14\\_Fiscal\\_Manual\\_Final.pdf](http://www.nyc.gov/html/dycd/downloads/pdf/FY14_Fiscal_Manual_Final.pdf) and [http://www.nyc.gov/html/dycd/downloads/pdf/Changes\\_to\\_the\\_FY15\\_Fiscal\\_Manual.pdf](http://www.nyc.gov/html/dycd/downloads/pdf/Changes_to_the_FY15_Fiscal_Manual.pdf). Additional DYCD Budget-related resources can be found at: [http://www.nyc.gov/html/dycd/html/resources/cbo\\_budgets.shtml](http://www.nyc.gov/html/dycd/html/resources/cbo_budgets.shtml)

The focus of the TA services, both at the programmatic and organizational levels, would be in the following key areas:

- Fiscal Staffing and Development – Strong fiscal management structures along with trained fiscal staff. The foundation of sound fiscal management is a financial system that provides the organization with accurate, up-to-date information. As organizations, and the number of programs they manage, grow, they must develop an appropriately-staffed, efficient fiscal management team. Essential practices both at the organizational and program level include cash flow management and maintenance of appropriate internal controls for activities such as receiving funds, recording cash receipts, tracking bank deposits, reconciling income and expenses, and managing petty cash. TA services would include guidance on how to successfully develop fiscal policies and procedures, which may include selection of fiscal software programs.
- Budgeting – Program managers and organizations must understand the full cost of running programs, including overhead costs such as administrative functions, rent and utilities. The TA vendor would help contractors’ program managers and senior leaders understand and develop program budgets and cost allocation plans. The TA vendor would emphasize the importance of good communication between program staff and fiscal staff, accurate information, and system for regular sharing of financial data to ensure that staff at different levels in the organization have a basic understanding of program budgets.
- Cash-flow projections – In any given period, organizations and individual programs must be able to see what revenue they will have and what they will be obliged to pay out. The TA vendor would provide relevant decision makers (who may include executive directors, chief financial officers, and members of the board of directors) with the skills needed for accurate cash flow projections. The aim would be to enable the contractor to carefully monitor revenue and expenses in order to identify and remedy any problems as early as possible.
- Common financial management issues identified by DYCD – The TA vendor would emphasize the need for contractors to adopt sound bookkeeping and cost allocation practices, follow budget line item authority, manage cash flow, understand IRS issues which create liens, and help contractors understand good financial practices by providing common examples of poor practice (See Appendix: Common Fiscal Issues Among DYCD-Funded Organizations). The TA vendor would work with DYCD staff to identify key indicators of financial health for not-for-profit organizations.
- Responsibilities of not-for-profit Board members – The TA vendor would help contractors understand the distinctive roles and responsibilities of Board members and staff employed to manage the organization’s programs and services. The vendor would stress the fiduciary responsibilities of Board members which include on-going financial monitoring and accountability based on accurate and timely information, approving budget, and ensuring adequate fiscal controls. The vendor would also highlight the Board’s responsibility for ensuring compliance with applicable federal and state laws, including, for example, timely payments of payroll taxes, filing of annual tax information returns, and new rules and regulations.

### **C. Agency Assumptions Regarding Payment Structure**

The anticipated payment structure for contracts awarded from this RFP will be based on a Full Day Expense (FDE) rate representing seven hours of consulting time. All expenses related to the delivery of TA services

would be covered by FDEs. The FDE should account for equipment and training materials, travel, space costs, pre-service assessments, preparation for training or consulting sessions, conducting consultations and workshops, and follow-up activities.

In all competitions, the maximum FDE rate that DYCD will pay is **\$1,500**.

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

If the contract resulting from this Request for Proposals will be subject to M/WBE participation requirements under Section 6-129 of the Administrative Code of the City of New York, as indicated by the inclusion of Schedule B – M/WBE Utilization Plan (**Attachment 4**) and the Participation Goals indicated in Part I thereof, proposers must complete the Schedule B – M/WBE Utilization Plan and submit it with their proposal. Please refer to the Schedule B – M/WBE Utilization Plan and the Notice to All Prospective Contractors (**Attachment 3**) for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms. If the proposer intends to seek a full or partial waiver of the Participation Goals on the grounds described in Section 10 of the Notice to All Prospective Contractors, including but not limited to, proposer’s intention to use its own forces to perform any or all of the required contract work would result in a failure to attain the Participation Goals, the proposer must request and obtain from the Agency a full or partial waiver of the Participation Goals (M/WBE Utilization Plan, Part III) in advance of proposal submission and submit the waiver determination with the proposal. Please note that if a partial waiver is obtained, the proposer is required to submit a completed Schedule B-M/WBE Utilization Plan based on the revised Participation Goals in order to be found responsive.

**Please note that the M/WBE requirement does not apply to proposals submitted by certified not-for-profit organizations.** Therefore, certified not-for-profit organizations are not required to submit a completed “Subcontractor Utilization Plan” nor the request form for a Pre-Award Waiver of the DYCD’s established Target Subcontracting Percentage for this procurement, all of which is included in the attached Schedule B. Please be aware that the proposer must still comply with any and all additional City, State, and Federal Laws and Regulations applicable to this procurement. **Note: If you are not a certified not-for-profit organization, as fully explained in the Notice to Prospective Contractors -- part of Attachment 3 -- and you intend to file a waiver of the Target Subcontracting Percentage, the waiver must be submitted to the Agency at least seven days prior to the proposal due date and time in order to be timely considered.**

#### **E. Compliance with Local Law 34**

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City established a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. For the purposes of the database, proposers are required to complete the attached Doing Business Data Form (**Attachment 8**) and return it with this proposal and should do so in a separate envelope. (If the proposer is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, the proposer will be notified by the Agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the Agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the proposer has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

#### **F. Whistleblower Protection Expansion Act Rider**

Local Law Nos. 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain City contractors from adverse

personnel action based on whistleblower activity relating to a City contract and require contractors to post a notice informing employees of their rights. Please read **Attachment 5**, the Whistleblower Protection Expansion Act Rider, carefully.

### **G. Compliance with the Iran Divestment Act**

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each proposer is required to complete the attached Bidders Certification of Compliance with the Iran Divestment Act, certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services. If a proposer appears on that list, the Agency/Department will be able to award a contract to such proposer only in situations where the proposer is taking steps to cease its investments in Iran or where the proposer is a necessary sole source. Please refer to **Attachment 6** for information on the Iran Divestment Act required for this solicitation and instructions on how to complete the required form and to <http://www.ogs.ny.gov/About/regs/ida.asp> for additional information concerning the list of entities.

### **H. Subcontractor Compliance Notice**

The selected vendor will be required to utilize the City's web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read Attachment 10, the subcontractor compliance notice as it relates to competitive solicitations.

## **SECTION IV - FORMAT AND CONTENT OF THE PROPOSAL**

### **Instructions:**

Proposers should provide all information required in the format below. The proposal should be printed on both sides of 8 ½" X 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, *i.e.*, the minimum **recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency** (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing.htm>). Pages should be paginated. The proposal will be evaluated on the basis of its content, not length. Failure to comply with any of these instructions will not make the proposal non-responsive.

### **A. Proposal Format**

#### **1. Proposal Summary**

The Proposal Summary form (Attachment 1) transmits the Proposal Package to DYCD. It should be completed, signed, and dated by an authorized representative of the proposer. Completing this form fully and accurately assists DYCD in the evaluation of proposals.

#### **2. Technical Assistance Proposal**

The Proposal is a clear, concise narrative. It will set forth the experience, capability, and service approach of the proposer and should include the following:

##### **a. Experience** (Preferable page limit: 8 pages, excluding requested attachments)

- i. Describe and demonstrate the successful relevant experience of the proposer and any subcontractors in providing the TA services described in Section III of this RFP - *i.e.*, *assessment, interventions, follow-up services, and short-term outcome evaluations*. Specifically demonstrate experience relating to:
  - Delivery of TA services to not-for-profit organizations, for at least five years, in the relevant service option;
  - Delivery of TA services in each of the principal TA modalities referred to in the RFP –*i.e.*, *sequenced train-the trainer workshops, on-site coaching, peer exchanges and similar approaches, and organizational consultations*. Provide examples of each of the modalities used by the proposer in past projects. Include the rationale for each modality choice and describe the assessment tools used and how the impact was measured. If available, provide findings from external evaluations of program effectiveness.
  - Hiring, management, and evaluation of the individual consultants who undertook the work.
- ii. Demonstrate that key staff (whether employees, consultants, or subcontractor employees) who would be assigned to provide the services under the contract would have at least five years successful experience providing TA or professional development services comparable to those in the relevant service option.

Attach resumes for staff to be assigned to the contract (whether employees, consultants, or subcontractor employees). Where staff has not yet been identified, describe the staff position(s) and confirm that resumes will be provided to DYCD prior to the conclusion of contract negotiations.

##### **b. Organizational Capability** (Preferable page limit: 5 pages, excluding requested attachments)

Demonstrate the proposer's organizational, managerial, and financial capability to carry out the services described above in Section III – Scope of Services. Specifically address the following:

- Provide the name, address, and contact information for all proposed subcontractors, if applicable.
- Demonstrate successful joint efforts with other organizations and agencies in providing TA services and other related services.
- Demonstrate the proposer's capacity to integrate the proposed TA into its existing operation. Attach an organizational chart indicating how staff who will deliver the proposed TA service relate to the overall organization.
- Demonstrate the effectiveness of the proposer's process for managing TA or professional development projects, including coordination with key stakeholders, systems for capturing outcomes and participant feedback and protocols for continuous quality improvement. Include a description of how staff/consultants are selected for projects, client complaints are handled, and service delivery is monitored.
- Describe the professional development that the proposer provides to its staff/consultants to promote high quality services.
- Describe how the organization leverages resources or uses existing relationships within the TA field to enhance service delivery.
- List at least two relevant funding references, including the name of the funding organization; the name, title, and telephone number of a contact person at the funding organization; and a brief description of the service provided. If there are no funding sources other than DYCD, other references may be listed.
- Describe the number of administrative, program, and consultant staff to be assigned to the contract and their job titles. If the organization will be recruiting new staff, describe the proposed recruitment strategies that will ensure they are appropriately qualified.
- If the proposer is required to file with the federal Office of Management and Budget pursuant to Circular A-133, attach a hard copy of the latest report filed with that office, indicating the period covered. If not, provide as a hard-copy attachment the most recent audit or audited financial statement of the organization conducted by a Certified Public Accountant, indicating the period covered, OR, if no audit has been performed, the most recent financial statement indicating the period covered AND an explanation of why no audited financial statement is available.
- State whether the proposer has submitted more than one proposal in response to this RFP and, if so, demonstrate the proposer's organizational capability to successfully provide services simultaneously under both service options proposed.
- Describe the proposed training facility, including location and accessibility to public transportation, conference and/or workshop rooms, and demonstrate that it will be adequate in size and design to accommodate vendor's staff, TA participants, and TA activities.
- Attach a lease or other documentation to demonstrate that the proposer would have control of the facility by the contract start date and for the duration of the contract term.
- Demonstrate that the facility will be easily accessible to public transportation and people with disabilities, and that the facility meets all Americans with Disabilities Act (ADA) requirements.
- Describe the technology and equipment that will be used to conduct trainings and presentations and to disseminate information.

#### **Additional Instructions for Not-for-Profit Organizations**

- Demonstrate how the Board of Directors and other governing bodies will be involved in the proposed program.

- Complete the Corporate Governance Certification (Attachment 5) and submit with the proposal.

**c. Proposed Approach** (Preferable page limit: 8 pages, excluding requested attachments)

Describe in detail how the proposer will provide the work described in Section III of this RFP and demonstrate that it will fulfill DYCD's goals and objectives. Specifically address the following:

*i. Summary*

Provide a brief summary of the proposer's approach to TA and how it will achieve DYCD's goals and objectives (Preferred page limit: 2 pages).

*ii. Staffing*

- Describe all salaried and non-salaried staff positions (if any) to be used to provide the proposed TA services and demonstrate that such staffing is sufficient to provide the services outlined in Section III – Scope of Services (Preferred page limit: ½ page).
- Demonstrate that all individuals to be assigned to the contract will be sensitive to the characteristics and needs of the contractors and their staff who receive the TA services (Preferred page limit: ½ page).

*iii. TA Approach Exercise*

Complete the following exercise, as instructed below, to demonstrate the proposer's design and approach to TA. **Please note: this exercise is for the sole purpose of evaluating proposals.** DYCD makes no commitment to incorporate any part of the proposer's answer into any future contract. For the proposed service option, this exercise requires the proposer to address each of the two listed TA topics from two different perspectives (1. training and 2. on-site consultation). Thus, to complete the exercise, the proposer would provide four separate responses.

**Topics**

Organizational Development Exercise Topics

Topic 1: Managing rapid organizational growth

Topic 2: Instituting effective and consistent staff supervision practices

Fiscal Management Exercise Topics

Topic 1: Developing fiscal capacity for organizational growth

Topic 2: Managing Cash Flow

**Perspective 1: Training**

Provide a brief narrative describing an appropriate workshop series designed to address a common challenge facing contractors, assuming there is a budget of \$10,000. This narrative should address all the following points:

- Brief description and rationale for the chosen approach
- Measurable outcomes to be achieved
- Number of workshops, central focus of each workshop, and the reasons for the choice of workshop topic
- Responsibilities of the contractor and the vendor in relation to specified outcomes
- Level(s) or type(s) of staff targeted by the workshop series (*e.g.*, line staff, program directors, executive directors)
- Number, qualifications, and experience of staff who would be assigned to the TA project
- Follow-up activities

- Tools to be used to assess the impact of the TA services

Reproduce the following information as a header to each of the “workshop narratives”:

TA Workshop Series, Topic #1: (Preferable page limit: 2 pages Service Option: _____ Topic: _____ Budget: \$10,000
--

TA Workshop Series, Topic #2: (Preferable page limit: 2 pages Service Option: _____ Topic: _____ Budget: \$10,000
--

### **Perspective 2: On-Site Consultation**

State **seven key questions** the proposer would ask the contractor in order to identify key issues and create an appropriate TA intervention.

Reproduce the following information as a header to the “seven key questions”:

Seven Questions, Topic #1: (Preferable page limit: ½ page Service Option: _____ Topic: _____
---

Seven Questions, Topic #2: (Preferable page limit: ½ page Service Option: _____ Topic: _____
---

### **3. Price Proposal**

The Price Proposal should include each of the following for providing the Scope of Services described in Section III of this RFP:

a. **One-Page Budget with the following information:**

- Total funding from DYCD requested by the proposer;
- Proposed rate per FDE (= 7 hours of consulting time);
- Proposed total number of FDEs;
- Estimated share of total FDEs that would be provided by subcontractors and the TA services that would be assigned to each subcontractors (if applicable)
- Estimated share of total FDEs that would be provided by consultants and the TA services that would be assigned to each consultant (if applicable)

b. **Budget Justification Narrative:**

- Describe how the proposed FDE rate was determined. Include an estimated break-down of the percentages that would be used to cover items such as indirect costs and materials.
- Demonstrate that the proposed FDE is comparable to FDEs which the proposer previously charged other public entities for comparable services. If the rate being proposed is not comparable to previously charged FDEs, justify the proposed difference. In addition, provide the following information on organizations for which the proposer provided comparable services: name of the organization(s), contact person name(s), and telephone number(s) (Preferred page limit: 1 page).

#### 4. Other Required Documents

The following additional documents are required to be completed and submitted with the proposal:

- SCHEDULE B – M/WBE Utilization Plan - Attachment 3 (if applicable)
- Corporate Governance Certification - Attachment 4 (if applicable)
- Iran Divestment Act Bidder’s Certification of Compliance - Attachment 7
- Doing Business Data form - Attachment 8.

#### 5. Acknowledgement of Addenda (Attachment 7)

The Acknowledgement of Addenda form serves as the proposer’s acknowledgement of the receipt of addenda to this RFP that may have been issued by DYCD prior to the Proposal Due Date and Time. The proposer should complete this acknowledgement as instructed on the form.

#### B. Proposal Package Contents (“Checklist”)

The Proposal Package should contain the following materials. Proposers should utilize this section as a “checklist” to assure completeness prior to submitting their proposal to DYCD.

1. The proposal package should include one original hard copy set of the documents in the order listed below and one exact electronic copy of the documents compatible with Adobe Acrobat Reader format (PDF) contained in a compact disk or USB drive. **Please note: the compact disk or USB drive will NOT be returned to the proposer:**

- **Proposal Summary Form - Attachment 1**
- **Proposal for Technical Assistance Services – as follows:**
  - a. Narrative
  - b. References for the proposer
  - c. List of subcontractors (if applicable)
  - d. Job descriptions/qualifications/organizational chart for staff positions, and resumes, as appropriate
  - e. Organizational assessment tool(s)
  - f. Audit Report or Certified Financial Statement or a statement as to why no report or statement is available
  - g. Lease or other document demonstrating vendor’s access to training facility
  - h. SCHEDULE B – M/WBE Utilization Plan - Attachment 3 (if applicable)
  - i. Corporate Governance Certification - Attachment 4 (if applicable)
  - j. Iran Divestment Act Bidder’s Certification of Compliance - Attachment 6
  - k. Acknowledgement of Addenda - Attachment 7
- **Price Proposal**
  - a. One-page Budget
  - b. Budget Justification Narrative

2. A sealed inner envelope labeled “Doing Business Data Form,” containing one original set and four (4) duplicate sets of the completed Doing Business Data Form (**Attachment 8**).

3. **For organizations who are NOT certified not-for-profits only:**

A sealed inner envelope labeled “M/WBE Documents,” containing one original set and four (4) duplicate sets of the required documentation related to M/WBE (see **Attachments 2 and 3**).

For each proposal submitted, enclose the documents listed above in a sealed envelope and hand deliver to Wendy Johnson, Deputy Agency Chief Contracting Officer, Office of Procurement. Label the envelope

with the proposer's name and address, "TA" and "PIN 26014P0005," the service option being proposed, and the name and telephone number of the proposer's contact person.

**SECTION V - PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES**

**A. Evaluation Procedures**

All proposals accepted by DYCD will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that DYCD determines to be non-responsive will not be further considered. DYCD’s Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below. DYCD reserves the right to make site visits, conduct interviews, or request that proposers make presentations as DYCD deems applicable and appropriate. Although DYCD may conduct discussions with proposers submitting acceptable proposals, it reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer’s initial proposal should contain its best technical and price terms.

**B. Evaluation Criteria**

- Demonstrated quantity and quality of successful relevant experience 30%
- Demonstrated level of organizational capability 30%
- Quality of proposed approach 40%

**C. Basis for Contract Award**

Award selection will be based on the best technically rated proposal whose price does not exceed the maximum FDE rate set forth in the RFP. DYCD will award contracts to the responsible proposers whose proposals are determined to be the most advantageous to the City, taking into consideration the price and other factors or criteria set forth in this RFP. In the case that a proposer is eligible for award to provide TA in more than one service option, DYCD reserves the right to determine, based on the proposer’s demonstrated organizational capability and the best interests of the City, respectively, for how many and which service option(s) the proposer will be awarded a contract(s).

Contract award shall be subject to timely completion of contract negotiations between DYCD and the selected proposer(s). DYCD reserves the right to award less than the full amount of the funding requested by proposers, and to modify the allocation of funds among the service options in the best interests of the City.

## **SECTION VI - GENERAL INFORMATION TO PROPOSERS**

- A. Complaints.** The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.
- B. Applicable Laws.** This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.
- C. General Contract Provisions.** Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A—General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.
- D. Contract Award.** Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.
- E. Proposer Appeal Rights.** Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.
- F. Multi-Year Contracts.** Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.
- G. Prompt Payment Policy.** Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.
- H. Prices Irrevocable.** Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.
- I. Confidential, Proprietary Information or Trade Secrets.** Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.
- J. RFP Postponement/Cancellation.** The Agency reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.
- K. Proposer Costs.** Proposers will not be reimbursed for any costs incurred to prepare proposals.
- L. Vendex Fees.** Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the Vendex system, including the Vendor Name Check Process, if a Vendor Name Check review is required to

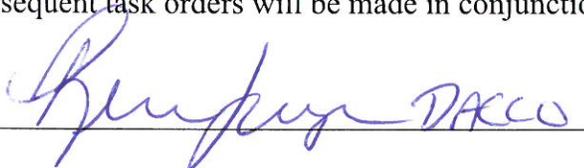
be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to \$1million) (above \$1million).

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

  X   The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not result in the displacement of any New York City employee within this Agency. See attached Displacement Determination Form.

\_\_\_\_\_ The Agency has determined that the contract(s) to be awarded through this Request for Proposals will result in the displacement of New York City employee(s) within this Agency. See attached Displacement Determination Form.

\_\_\_\_\_ The contract to be awarded through this Request for Proposals is a task order contract that does not simultaneously result in the award of a first task order; a displacement determination will be made in conjunction with the issuance of each task order pursuant to such task order contract. Determinations for any subsequent task orders will be made in conjunction with such subsequent task orders.

  
\_\_\_\_\_  
(Deputy Agency Chief Contracting Officer)

7/30/14  
Date

## Appendix

RFP TITLE: SONYC Technical Assistance

PIN: 26014P0005

### Common Fiscal Issues Among DYCD-Funded Organizations

#### Contract Agency Finance - Payments Indicators

1. No submission of claims (PERS\*) with a cash advance granted.
2. Low spending (burn) rate on contract.
3. Issues following line item budget in claims process.
  - a. Large number of disallowances in claims (PERS) submissions.
4. Cash flow management
  - a. Several requests from CBO to rush claims (PERS) for payroll
5. IRS Issues; liens,
  - a. NYC Department of Finance does not allow payment if there are IRS issues or other liens on against the CBO.

*\*PERS stands for Program Expense Report Summary. It is the DYCD term for the CBO contract reimbursement claim form.*

#### Contract Agency Audit Indicators - Common findings in the contract audit review process:

1. Payroll taxes not paid in a timely manner.
2. Claims exceeded the approved and allowable budgeted amounts.
3. Costs claimed were incurred during the prior fiscal year.
4. Claims not supported with a sound Cost Allocation Plan.
5. Failure to follow procurements rules as prescribed by the DYCD fiscal manual.
  - a. For example, lack of bid documentation for large purchases.
6. The source documents (for example, bank statements, timesheets, payroll registers, purchase orders, invoices, cancelled checks) do not support the individual account transactions or balance within the general ledger.
7. Invoices and cancelled checks not available for review.
8. Bank reconciliation statements for operating and payroll accounts contained checks that remained outstanding for six months or longer.

#### Key Financial Ratios

##### Days Cash on Hand

- Operating Cash divided by Cash Expenses per Day
- Cash + Investments divided by Cash Expenses per Day

##### Current Ratio

- Current Assets divided by Current Liabilities (>1 is good)

##### Aged Accounts Receivable and Accounts Payable

- Accounts Receivable over 90 days divided by Total Accounts Receivable
- Accounts Payable over 90 days divided by Total Accounts Payable

**Attachment 1  
Proposal Summary Form**

**RFP TITLE: SONYC Technical Assistance**

**PIN: 26014P0005**

Organization: \_\_\_\_\_ EIN: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ City State Zip Code

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Proposed Service Option (Check one)	
<input type="checkbox"/>	Service Option 1      Organizational Development
<input type="checkbox"/>	Service Option 2      Fiscal Management

DYCD Annual Funding Request: \$ \_\_\_\_\_ Full Day Equivalent Rate \$ \_\_\_\_\_

Training Site: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ City State Zip Code

Proposer submitted proposals for both service options in response to this RFP?  Yes  No

## Attachment 2

**NOTICE TO ALL PROSPECTIVE CONTRACTORS  
PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS  
ENTERPRISES IN CITY PROCUREMENT  
RFP TITLE: SONYC Technical Assistance                      PIN: 26014P0005**

### **ARTICLE I. M/WBE PROGRAM**

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes the program for participation in City procurement (“M/WBE Program”) by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services (“DSBS”) promulgated thereunder.

**If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the “M/WBE Utilization Plan”), and are detailed below.**

**The Contractor must comply with all applicable MBE and WBE requirements for this Contract.**

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

### **PART A PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS**

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, (“**Participation Goals**”), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed nonresponsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for

individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the

**Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

**C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.**

5. Where an M/WBE Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multiyear contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE:**

**If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work. In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.**

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at [www.nyc.gov/buycertified](http://www.nyc.gov/buycertified), by emailing DSBS at [buyer@sbs.nyc.gov](mailto:buyer@sbs.nyc.gov), by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), emailing [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of **the Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the Participation Goals in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its **M/WBE** Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at [\\_\\_rfpquestions@dycd.nyc.gov](mailto:__rfpquestions@dycd.nyc.gov) or via facsimile at 212-676-8129. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an

Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE Utilization Plan**. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE Utilization Plan** is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE Utilization Plan**. (a) A Contractor may request a modification of its **M/WBE Utilization Plan** after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor’s **M/WBE Utilization Plan** if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the

**Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women’s business organizations;
- (ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women’s business organizations;
- (iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;
- (iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the **M/WBE Utilization Plan**, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (v) The Contractor held meetings with MBEs and/or WBEs prior to

the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;

(viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

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

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE Utilization Plan** and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its **M/WBE Utilization Plan**, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

## **PART B**

### **MISCELLANEOUS**

1. The Contractor shall take notice that, if this solicitation requires the establishment of a **M/WBE Utilization Plan**, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE Utilization Plan**.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a **M/WBE Utilization Plan** shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

3. DSBS is available to assist contractors and potential contractors in determining the

availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required

### **Participation Goals.**

## **ARTICLE II. ENFORCEMENT**

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE Utilization Plan**, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to, any **M/WBE Utilization Plan**, Agency may determine that one of the following actions should be taken:

- (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) making a finding that the Contractor is in default of the Contract;
- (d) terminating the Contract;
- (e) declaring the Contractor to be in breach of Contract;
- (f) withholding payment or reimbursement;
- (g) determining not to renew the Contract;
- (h) assessing actual and consequential damages;
- (i) assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the

Contractor that has been found to be in noncompliance; or  
(k) taking any other appropriate remedy.

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE Utilization Plan** or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

6. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

**Attachment 3**  
**SCHEDULE B – M/WBE Utilization Plan**  
**RFP TITLE: SONYC Technical Assistance** **PIN: 26014P0005**



## THE CITY OF NEW YORK

**SCHEDULE B – M/WBE Utilization Plan**  
**Part I: M/WBE Participation Goals**
**Part I to be completed by contracting agency**
**Contract Overview**

<b>APT E- Pin #</b>	<u>26014P0005</u>	<b>FMS Project ID#:</b>	_____		
<b>Project Title/ Agency PIN #</b>	<u>SONYC PROGRAMS TA RFP</u>				
<b>Bid/Proposal Response Date</b>	<u>2014-07-23</u>				
<b>Contracting Agency</b>	<u>DYCD</u>				
<b>Agency Address</b>	_____	<b>City</b>	<u>NEW YORK</u>	<b>State</b>	<u>NY</u>
				<b>Zip Code</b>	<u>10038</u>
<b>Contact Person</b>	<u>Renise Ferguson</u>	<b>Title</b>	<u>Deputy ACCO</u>		
<b>Telephone #</b>	<u>212-442-8687</u>	<b>Email</b>	<u>referguson@dycd.nyc.gov</u>		

**Project Description** *(attach additional pages if necessary)*

Through this RFP, the Department of Youth and Community Development (DYCD) seeks qualified vendors to provide technical assistance (TA) to support DYCD -funded not-for-profit organizations that operate School's Out NYC (SONYC) programs for middle school youth. These technical assistance services are specifically for organizational development and fiscal management

**M/WBE Participation Goals for Services**

*Enter the percentage amount for each group or for an unspecified goal. Please note that there are no goals for Asian Americans in Professional Services.*

**Prime Contract Industry:** Professional Services

<b>Group</b>	<b>Percentage</b>
<u>Unspecified</u>	<u>10%</u>
or	
<u>Black American</u>	<u>0%</u>
<u>Hispanic American</u>	<u>0%</u>
<u>Asian American</u>	<u>0%</u>
<u>Women</u>	<u>0%</u>
<b>Total Participation Goals</b>	<u>10%</u>

**SCHEDULE B - Part II: M/WBE Participation Plan**

**Part II to be completed by the bidder/proposer.**

Please note: For Non-M/WBE Prime Contractors who will NOT subcontract any services and will self-perform the entire contract, you must obtain a FULL waiver by completing the Waiver Application on pages 5 and 6 and timely submitting it to the contracting agency pursuant to the Notice to Prospective Contractors. Once a FULL WAIVER is granted, it must be included with your bid or proposal and you do not have to complete or submit this form with your bid or proposal.

<b>Section I: Prime Contractor Contact Information</b>	
Tax ID # _____	FMS Vendor ID # _____
Business Name _____	Contact Person _____
Address _____	
Telephone # _____	Email _____

<b>Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.</b>
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<b>PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS</b>				
<input type="checkbox"/> <b>For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals.</b>  Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture.  Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	<b>Total Bid/Proposal Value</b>  \$	X	<b>Agency Total Participation Goals (Line 1, Page 1)</b>  =	<b>Calculated M/WBE Participation Amount</b>  \$ Line 2

<b>PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS</b>				
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<input type="checkbox"/> <b>For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Modified M/WBE Participation Goals.</b>  Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture.  Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	<b>Total Bid/Proposal Value</b>  \$	X	<b>Adjusted Participation Goal (From Partial Waiver)</b>  =	<b>Calculated M/WBE Participation Amount</b>  \$ Line 3
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**Section III: M/WBE Utilization Plan: How Proposer/Bidder Will Fulfill M/WBE Participation Goals. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. Check applicable box. The Proposer or Bidder will fulfill the M/WBE Participation Goals:**

- As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the contract the value of which is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals. Please check all that apply to Prime Contractor:
- MBE       WBE
- As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner's participation and/or the value of any work subcontracted to other M/WBE firms is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.
- As a non M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the amount located on Lines 2 or 3 above, as applicable.

**Section IV: General Contract Information**

What is the expected percentage of the total contract dollar value that you expect to award in subcontracts for services, regardless of M/WBE status? % \_\_\_\_\_

*Enter brief description of the type(s) and dollar value of subcontracts for all/any services you plan on subcontracting if awarded this contract. For each item, indicate whether the work is designated for participation by MBEs and/or WBEs and the time frame in which such work is scheduled to begin and end. Use additional sheets if necessary.*

✓ Scopes of Subcontract Work

1. \_\_\_\_\_
2. \_\_\_\_\_
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13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_
16. \_\_\_\_\_
17. \_\_\_\_\_

**Section V: Vendor Certification and Required Affirmations***I hereby:*

- 1) *acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;*
- 2) *affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;*
- 3) *agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;*
- 4) *agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and*
- 5) *agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or If a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.*

**Signature** \_\_\_\_\_**Date** \_\_\_\_\_**Print Name** \_\_\_\_\_**Title** \_\_\_\_\_

**SCHEDULE B – PART III – REQUEST FOR WAIVER OF M/WBE PARTICIPATION REQUIREMENT**

**Contract Overview**

Tax ID # \_\_\_\_\_ FMS Vendor ID # \_\_\_\_\_  
 Business Name \_\_\_\_\_  
 Contact Name \_\_\_\_\_ Telephone # \_\_\_\_\_ Email \_\_\_\_\_  
 Type of Procurement  Competitive Sealed Bids  Other Bid/Response Due Date \_\_\_\_\_  
 APT E-PIN # (for this procurement): 26014P0005 Contracting Agency: DYCD

**M/WBE Participation Goals as described in bid/solicitation documents**

\_\_\_\_\_ 10% Agency M/WBE Participation Goal

**Proposed M/WBE Participation Goal as anticipated by vendor seeking waiver**

\_\_\_\_\_ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for services and/or credited to an M/WBE Prime Contractor or Qualified Joint Venture.

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

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts *some* of this type of work but at a *lower* % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. (Attach subcontracting plan outlining services that the vendor will self-perform and subcontract to other vendors or consultants.)
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal above. Explain under separate cover.

**References**

List 3 most recent contracts performed for NYC agencies (if any). Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

CONTRACT NO.	AGENCY	DATE COMPLETED
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

**List 3 most recent contracts performed for other entities. Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.**

(Complete ONLY if vendor has performed fewer than 3 New York City contracts.)

<b>TYPE OF Contract</b> _____	<b>AGENCY/ENTITY</b> _____	<b>DATE COMPLETED</b> _____
<b>Manager at agency/entity that hired vendor (Name/Phone No./Email)</b> _____		
<b>Total Contract Amount</b> \$ _____	<b>Total Amount Subcontracted</b> \$ _____	
<b>Type of Work Subcontracted</b> _____		

<b>TYPE OF Contract</b> _____	<b>AGENCY/ENTITY</b> _____	<b>DATE COMPLETED</b> _____
<b>Manager at agency/entity that hired vendor (Name/Phone No./Email)</b> _____		
<b>Total Contract Amount</b> \$ _____	<b>Total Amount Subcontracted</b> \$ _____	
<b>Item of Work Subcontracted and Value of subcontract</b> _____	<b>Item of Work Subcontracted and Value of subcontract</b> _____	<b>Item of Work Subcontracted and Value of subcontract</b> _____

<b>TYPE OF Contract</b> _____	<b>AGENCY/ENTITY</b> _____	<b>DATE COMPLETED</b> _____
<b>Manager at agency/entity that hired vendor (Name/Phone No./Email)</b> _____		
<b>Total Contract Amount</b> \$ _____	<b>Total Amount Subcontracted</b> \$ _____	
<b>Item of Work Subcontracted and Value of subcontract</b> _____	<b>Item of Work Subcontracted and Value of subcontract</b> _____	<b>Item of Work Subcontracted and Value of subcontract</b> _____

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

<b>Signature:</b> _____	<b>Date:</b> _____
<b>Print Name:</b> _____	<b>Title:</b> _____

*Shaded area below is for agency completion only*

**AGENCY CHIEF CONTRACTING OFFICER APPROVAL**  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**CITY CHIEF PROCUREMENT OFFICER APPROVAL**  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Waiver Determination**

Full Waiver Approved:

Waiver Denied:

Partial Waiver Approved:

Revised Participation Goal: \_\_\_\_\_ %

**Attachment 4**  
**Corporate Governance Certification**

**RFP TITLE: SONYC Technical Assistance**

**PIN: 26014P0005**

To enter into a contract with DYCD, each organization must certify that its organizational capability is sufficient to support the services it has contracted to provide. To certify, complete the form below (including the attached list of the members of the Board of Directors, with the name, title, address, telephone number, and e-mail address of each member). The certification must be notarized by a Notary Public.

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I, \_\_\_\_\_, am the Chairperson of the Board of \_\_\_\_\_ (“Proposer”), a not-for-profit organization that has proposed to provide technical assistance services in response to this RFP. I hereby certify that the Proposer:

1. Is governed by a Board of Directors, whose names and addresses are fully and accurately set forth on the attached list.
2. Maintains its corporate books and records, including minutes of each meeting, at the Proposer address stated on the Proposal Summary Form (Attachment 1 to this RFP).
3. Has held in the past 12 months \_\_\_\_\_ meetings of the Board of Directors at which a quorum was present.
4. Reviews, at least annually, at a meeting of the Board of Directors and has reviewed in the past 12 months each of the following topics:
  - a. Executive compensation
  - b. Internal controls, including financial controls
  - c. Audits
  - d. Program operations and outcomes.

**Name of Organization (Print):** \_\_\_\_\_

**Name of Board Chairperson (Print):** \_\_\_\_\_

**Signature of Board Chairperson:**

\_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014\_\_

\_\_\_\_\_  
NOTARY PUBLIC



**Attachment 5**  
**Whistleblower Protection Expansion Act Rider 2012**  
**RFP TITLE: SONYC Technical Assistance** **PIN: 26014P0005**

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

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
  - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
  - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
- (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit,

failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

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

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

**Attachment 6**  
**Iran Divestment Act Compliance Rider For**  
**New York City Contractors**

**RFP TITLE: SONYC Technical Assistance**

**PIN: 26014P0005**

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law (“SFL”) §165-a and General Municipal Law (“GML”) §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder’s certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

**Bidder's Certification of Compliance with  
Iran Divestment Act**

**RFP TITLE: SONYC Technical Assistance**

**PIN: 26014P0005**

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

*[Please Check One]*

**BIDDER'S CERTIFICATION**

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer 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, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
  
- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 2014

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Notary Public

**Attachment 7**  
**Acknowledgement of Addenda**  
RFP TITLE: SONYC Technical Assistance

PIN: 26014P0005

Proposer: \_\_\_\_\_

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**COMPLETE PART I OR PART II, WHICHEVER IS APPLICABLE.**

PART I: Listed below are the dates of issuance for **each addendum received** in connection with this RFP:

ADDENDUM #1 DATED: \_\_\_\_\_, 2013

ADDENDUM #2 DATED: \_\_\_\_\_, 2013

ADDENDUM #3 DATED: \_\_\_\_\_, 2013

ADDENDUM #4 DATED: \_\_\_\_\_, 2013

ADDENDUM #5 DATED: \_\_\_\_\_, 2013

ADDENDUM #6 DATED: \_\_\_\_\_, 2013

ADDENDUM #7 DATED: \_\_\_\_\_, 2013

ADDENDUM #8 DATED: \_\_\_\_\_, 2013

PART II: \_\_\_\_\_ NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS RFP.

Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

**Attachment 8**  
**Doing Business Data Form**

**RFP TITLE: SONYC Technical Assistance**

**PIN: 26014P0005**



# Doing Business Data Form

<b>To be completed by the City agency prior to distribution</b>			
Agency: _____		Transaction ID: _____	
<b>Check One:</b>	<b>Transaction Type (check one):</b>		
<input type="checkbox"/> Proposal	<input type="checkbox"/> Concession	<input type="checkbox"/> Contract	<input type="checkbox"/> Economic Development Agreement
<input type="checkbox"/> Award	<input type="checkbox"/> Franchise	<input type="checkbox"/> Grant	<input type="checkbox"/> Pension Investment Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

**Please return the completed Data Form to the City office that supplied it.** Please contact the Doing Business Accountability Project at [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov) or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

## Section 1: Entity Information

Entity Name: \_\_\_\_\_  
 Entity EIN/TIN: \_\_\_\_\_

### **Entity Filing Status (select one):**

- Entity has never completed a Doing Business Data Form. *Fill out the entire form.*
- Change from previous Data Form dated \_\_\_\_\_. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*
- No Change from previous Data Form dated \_\_\_\_\_. *Skip to the bottom of the last page.*

Entity is a Non-Profit:       Yes       No

Entity Type:     Corporation (any type)     Joint Venture       LLC       Partnership (any type)  
                    Sole Proprietor                     Other (specify): \_\_\_\_\_

Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone : \_\_\_\_\_ Fax : \_\_\_\_\_  
 E-mail: \_\_\_\_\_

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

**Section 2: Principal Officers**

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

**Chief Executive Officer (CEO) or equivalent officer**

This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

This person replaced former CEO: \_\_\_\_\_ on date: \_\_\_\_\_

**Chief Financial Officer (CFO) or equivalent officer**

This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

This person replaced former CFO: \_\_\_\_\_ on date: \_\_\_\_\_

**Chief Operating Officer (COO) or equivalent officer**

This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

This person replaced former COO: \_\_\_\_\_ on date: \_\_\_\_\_

**Section 3: Principal Owners**

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual owners exist, please check the appropriate box to indicate why and skip to the next page. If the entity is owned by other companies, those companies do **not** need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

**There are no owners listed because (select one):**

- The entity is not-for-profit
- There are no individual owners
- No individual owner holds 10% or more shares in the entity
- Other (explain): \_\_\_\_\_

**Principal Owners (who own or control 10% or more of the entity):**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

**Remove the following previously-reported Principal Owners:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Section 4: Senior Managers**

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. **At least one senior manager must be listed, or the Data Form will be considered incomplete.** If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

**Senior Managers:**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

**Remove the following previously-reported Senior Managers:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Certification**

**I certify that the information submitted on these four pages and \_\_\_\_\_ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Entity Name: \_\_\_\_\_

Title: \_\_\_\_\_ Work Phone #: \_\_\_\_\_

Please return this form to the City agency that supplied it to you, not to the Doing Business Accountability Project.

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.



**Attachment 9**  
**Subcontracting Compliance Notice**  
**RFP TITLE: Technical Assistance** **PIN: 26014P0005**

**NOTICE TO BIDDERS**

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

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

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

Contractor hereby agrees to these provisions.

**Attachment 10**  
**GENERAL PROVISIONS GOVERNING CONTRACTS**  
**FOR CONSULTANTS, PROFESSIONAL, TECHNICAL,**  
**HUMAN AND CLIENT SERVICES**

RFP TITLE: Technical Assistance

PIN: 26014P0005

**APPENDIX A**

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR**  
**CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN AND CLIENT SERVICES**

**TABLE OF CONTENTS**

**DEFINITIONS**

**Definitions.....1**

**REPRESENTATIONS AND WARRANTIES**

**Procurement of Agreement.....2**

**Conflicts of Interest.....2**

**Fair Practices.....4**

**VENDEX.....4**

**Political Activity.....4**

**Religious Activity.....5**

**Unlawful Discriminatory Practices: City Admin. Code § 6-123.....5**

**Bankruptcy and Reorganization.....5**

**ASSIGNMENT AND SUBCONTRACTING**

**Assignment.....5**

**Subcontracting.....6**

**LABOR PROVISIONS**

**Independent Contractor Status.....7**  
**Employees.....8**  
**Removal of Individuals Performing Work.....8**  
**Minimum Wage.....8**  
**Non-Discrimination: New York State Labor Law § 220-e.....9**  
**Non-Discrimination: City Admin. Code § 6-108.....9**  
**Non-Discrimination: E.O. 50 -- Equal Employment Opportunity.....10**

**RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS**

**Books and Records.....12**  
**Retention of Records.....12**  
**Inspection.....12**  
**Audit.....13**  
**No Removal of Records from Premises.....13**  
**Electronic Records.....13**  
**Investigations Clause.....14**  
**Confidentiality.....16**

**COPYRIGHTS, PATENTS, INVENTIONS AND ANTITRUST**

**Copyrights.....18**  
**Patents and Inventions.....19**  
**Pre-existing Rights.....19**  
**Antitrust.....19**

**INSURANCE**

**Agreement to Insure.....19**

**Commercial General Liability Insurance .....19**

**Professional Liability Insurance.....20**

**Workers’ Compensation, Disability Benefits, and  
Employer’s Liability Insurance .....20**

**Unemployment Insurance .....20**

**Business Automobile Liability Insurance.....21**

**General Requirements for Insurance Coverage and Policies.....21**

**Proof of Insurance.....21**

**Miscellaneous .....22**

**PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

**Reasonable Precautions.....23**

**Protection of City Property.....24**

**Indemnification .....24**

**Infringement Indemnification .....24**

**Indemnification Obligations Not Limited By Insurance Obligation.....24**

**Actions By or Against Third Parties.....24**

**Withholding of Payments.....25**

**No Third Party Rights.....25**

**CONTRACT CHANGES**

**Contract Changes.....25**

**Changes Through Fault of Contractor.....26**

**TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING**

**Termination by the City Without Cause.....26**  
**Reductions in Federal, State and/or City Funding.....26**  
**Contractor Default .....27**  
**Force Majeure .....29**  
**Procedures for Termination.....29**  
**Miscellaneous Provisions .....30**

**PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

**Prompt Payment.....31**  
**Electronic Funds Transfer.....31**

**CLAIMS**

**Choice of Law.....31**  
**Jurisdiction and Venue.....31**  
**Resolution of Disputes.....31**  
**Claims and Actions .....37**  
**No Claim Against Officers, Agents or Employees.....37**  
**General Release.....37**  
**No Waiver.....38**

**APPLICABLE LAWS**

**PPB Rules.....38**  
**All Legal Provisions Deemed Included.....38**

<b>Severability / Unlawful Provisions Deemed Stricken.....</b>	<b>38</b>
<b>Compliance With Laws.....</b>	<b>38</b>
<b>Americans with Disabilities Act (ADA).....</b>	<b>38</b>
<b>Voter Registration.....</b>	<b>39</b>
<b>Participation in an International Boycott.....</b>	<b>41</b>
<b>MacBride Principles.....</b>	<b>42</b>
<b>Access to Public Health Insurance Coverage Information.....</b>	<b>42</b>
<b>Distribution of Personal Identification Materials.....</b>	<b>43</b>

**MISCELLANEOUS PROVISIONS**

<b>Conditions Precedent.....</b>	<b>44</b>
<b>Merger.....</b>	<b>44</b>
<b>Headings.....</b>	<b>44</b>
<b>Notice.....</b>	<b>45</b>

<b>AFFIRMATION.....</b>	<b>46</b>
<b>CERTIFICATION BY BROKER.....</b>	<b>4</b>

## APPENDIX A

### GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN AND CLIENT SERVICES

#### DEFINITIONS

##### Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. “Agency Chief Contracting Officer” or “ACCO” shall mean 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.

B. “Agreement” shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” shall mean The City of New York.

D. “City Chief Procurement Officer” or “CCPO” shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” shall mean the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

F. “Comptroller” shall mean the Comptroller of the City of New York.

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

H. “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

J. “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. “PPB Rules” shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 et seq.

M. “State” shall mean the State of New York.

## **REPRESENTATIONS AND WARRANTIES**

### **Procurement of Agreement**

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

### **Conflicts of Interest**

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

**[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]**

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees and members of their immediate families are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees and members of their immediate families may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

**Fair Practices**

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

## **VENDEX**

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

### **Political Activity**

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

### **Religious Activity**

There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

### **Unlawful Discriminatory Practices: Admin. Code § 6-123**

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

## **Bankruptcy and Reorganization**

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

## **ASSIGNMENT AND SUBCONTRACTING**

### **Assignment**

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

### **Subcontracting**

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five

Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The

City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

## **LABOR PROVISIONS**

### **Independent Contractor Status**

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

### **Employees**

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

### **Removal of Individuals Performing Work**

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

## **Minimum Wage**

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

## **Non-Discrimination: New York State Labor Law § 220-e**

A. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such 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;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

B. The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

## **Non-Discrimination: Admin. Code § 6-108**

If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by New York City Administrative Code § 6-108, that:

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

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph 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. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

### **Non-Discrimination: E.O. 50 -- Equal Employment Opportunity**

A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

1. Will not discriminate unlawfully 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;

2. Will not discriminate unlawfully 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;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. 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.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

## **RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS**

### **Books and Records**

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence, and to utilize appropriate accounting procedures and practices, which sufficiently

and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

### **Retention of Records**

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

### **Inspection**

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection. [Notwithstanding the above, where the Contractor maintains or creates client records with a unique identifier for a client, the Contractor may redact or maintain in separate records the names, addresses, social security numbers, and other personally identifying information before providing access pursuant to this Section, provided that the Contractor not redact client borough and zip code. If the Contractor maintains and provides access to such redacted or uniquely identified records, the Contractor is not obligated to provide access to any records pursuant to this Section where the inspection or review of such records would waive the attorney-client or attorney work product privileges. In addition, Contractor may, upon request to and written approval from the Department, withhold from disclosure certain categories of documents that are not protected by the attorney-client or attorney work product privileges but where Contractor believes that disclosure of such documents would interfere or impair the provision of services under this Agreement, provided that withholding such documents does not](#)

impede the ability of the Department to ascertain that contracted-for services have been rendered in accordance with this Agreement.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. Notwithstanding the above, the Contractor is not obligated to allow observations of face-to-face client interactions where such access would waive the attorney-client privilege but such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being properly performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section.

### **Audit**

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise. Notwithstanding the above, where the Contractor maintains or creates client records with a unique identifier for a client, the Contractor may redact or maintain in separate records the names, addresses, social security numbers, and other personally identifying information before providing access pursuant to this Section, provided that the Contractor not redact client borough and zip code. If the Contractor maintains and provides access to such redacted or uniquely identified records, the Contractor is not obligated to provide access to any records pursuant to this Section where the inspection or review of such records would waive the attorney-client or attorney work product privileges. In addition, Contractor may, upon request to and written approval from the Department, withhold from disclosure certain categories of documents that are not protected by the attorney-client or attorney work product privileges but where Contractor believes that disclosure of such documents would interfere or impair the provision of services under this Agreement, provided that withholding such documents does not impede the ability of the Department to ascertain that contracted-for services have been rendered in accordance with this Agreement.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

## **No Removal of Records from Premises**

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

## **Electronic Records**

As used in this Appendix A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

## **Investigations Clause**

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. 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, or 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, or;

2. 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;

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less 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.

2. If any non-governmental party to the hearing requests an adjournment, the Commissioner 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 Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. 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

2. 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 on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. 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.

2. 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.

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

4. 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 Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

1. The term “license” or “permit” as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term “person” as used in this Section 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.

3. The term “entity” as used in this Section 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.

4. The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

**Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the

Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

## **COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST**

### **Copyrights**

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

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

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

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

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

## **Patents and Inventions**

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

## **Pre-existing Rights**

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

## **Antitrust**

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

## **INSURANCE**

### **Agreement to Insure**

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

### **Commercial General Liability Insurance**

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

### **Professional Liability Insurance**

A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

### **Workers' Compensation, Disability Benefits, and Employer's Liability Insurance**

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

### **Unemployment Insurance**

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

### **Business Automobile Liability Insurance**

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

## **General Requirements for Insurance Coverage and Policies**

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / “VII” or a Standard and Poor’s rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

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

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City’s limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

## **Proof of Insurance**

A. For Workers’ Compensation Insurance, Disability Benefits Insurance, and Employer’s Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers’ compensation coverage.

1. C-105.2 Certificate of Workers’ Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers’ Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers’ Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers’ Compensation Insurance, Disability Benefits Insurance, Employer’s Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor’s general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed “Certification by Broker” in the form attached to this Appendix A or

copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

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

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

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

### **Miscellaneous**

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

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

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

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

## **PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

### **Reasonable Precautions**

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

### **Protection of City Property**

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, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

### **Indemnification**

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

### **Infringement Indemnification**

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any

copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

### **Indemnification Obligations Not Limited By Insurance Obligation**

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

### **Actions By or Against Third Parties**

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

### **Withholding of Payments**

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

### **No Third Party Rights**

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

## **CONTRACT CHANGES**

### **Contract Changes**

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

### **Changes Through Fault of Contractor**

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

## **TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING**

### **Termination by the City Without Cause**

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

### **Reductions in Federal, State and/or City Funding**

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments,

including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

### **Contractor Default**

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

- a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
- b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
- c. a criminal violation of any state or federal antitrust law;
- d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
- f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

### **Force Majeure**

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

### **Procedures for Termination**

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as

set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

#### **Miscellaneous Provisions**

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

## **PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

### **Prompt Payment**

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

### **Electronic Funds Transfer**

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

## **CLAIMS**

### **Choice of Law**

This Agreement shall be deemed to be executed in the City and 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 (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

### **Jurisdiction and Venue**

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

### **Resolution of Disputes**

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. 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, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

B. 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.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless

otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor 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 Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor 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 City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, 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 Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, 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 contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

3. 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 Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. 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 Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. Time, Form, and Content of Notice. Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor 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 Contractor 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 Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. 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.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. 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 Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. 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 Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor 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 Agreement.

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings (“OATH”) or his or 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;

2. the City Chief Procurement Officer (“CCPO”) or his or 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

3. 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.

G. 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 Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor 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 Contractor 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 Contractor 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 Contractor to, the Comptroller’s Office. The Contractor 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 Contractor 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.

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor 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 Contractor. 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.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor 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 Contractor 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.

4. 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 this Agreement. 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.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor 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.

6. 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 PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement 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.

### **Claims and Actions**

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

### **No Claim Against Officers, Agents or Employees**

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

### **General Release**

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

### **No Waiver**

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

## **APPLICABLE LAWS**

### **PPB Rules**

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

### **All Legal Provisions Deemed Included**

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

### **Severability / Unlawful Provisions Deemed Stricken**

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

### **Compliance With Laws**

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

### **Americans with Disabilities Act (ADA)**

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor’s compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

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

## **Voter Registration**

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section, the word “Contractor” shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor’s or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor’s employees shall not:

a. seek to influence an applicant’s political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

### **Participation in an International Boycott**

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of 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 or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

### **MacBride Principles**

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) 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.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

### **Access to Public Health Insurance Coverage Information**

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C

of this Section. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. “Contractors” to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor’s contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter “pamphlet”), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the

commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

### **Distribution of Personal Identification Materials**

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

## **MISCELLANEOUS PROVISIONS**

### **Conditions Precedent**

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

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

### **Merger**

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

## **Headings**

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

## **Notice**

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

**AFFIRMATION**

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

Full name of Proposer or Bidder *[below]*

\_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:**

A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER \_\_\_\_\_

B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

C - Corporation

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

By \_\_\_\_\_

Signature

\_\_\_\_\_

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

\* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

**CERTIFICATION BY BROKER**

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

**CERTIFICATION BY BROKER**

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

\_\_\_\_\_  
[Name of broker (typewritten)]

\_\_\_\_\_  
[Address of broker (typewritten)]

\_\_\_\_\_  
[Signature of authorized officer of broker]

\_\_\_\_\_  
[Name of authorized officer (typewritten)]

\_\_\_\_\_  
[Title of authorized officer (typewritten)]

\_\_\_\_\_  
[Contact Phone Number for Broker (typewritten)]

\_\_\_\_\_  
[Email Address of Broker (typewritten)]

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 201\_

\_\_\_\_\_

NOTARY PUBLIC

