Department of Education

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*Chancellor*

# Procurement Policy and Procedures

## Draft for Public Comment

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Oral comments may be left at 212-374-6754
Written comments may be submitted to procurementpolicy@schools.nyc.gov
All comments must be submitted by January 25, 2010.

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# CHAPTER 1
# GENERAL PROVISIONS

## Section 1-01 STATEMENT OF PURPOSE.

The underlying purposes of these Procurement Policies and Procedures are to ensure the wise, prudent, and economical use of public money by the New York City Department of Education (DOE) in the best interest of the taxpayers; to guard against favoritism, improvidence, extravagance, fraud, and corruption; to ensure that contracts are awarded consistent with law and on the basis of best value, including, but not limited to maximum quality, lowest cost or lowest possible cost, and efficiency; to make as consistent as possible the uniform application of these policies throughout the DOE; to provide for increased public confidence in the DOE's public procurement procedures; to maximize to the fullest extent the purchasing power of the DOE; to foster effective broad-based competition from all segments of the vendor community, including small businesses, minority and women-owned and operated enterprises; to ensure appropriate public access to contracting information; and to meet the needs of the students, staff and offices of the DOE.

## Section 1-02 DEFINITIONS.

Assistant Principal. An Assistant Principal of a school in the New York City public school system.

Best and Final Offers. The revised and corrected final proposals submitted by vendors after discussions have been held.

Brand Name Only Specification. A specification that cites the brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

Brand Name or Equal Specification. A specification that cites brand name, model number, etc., as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

Chancellor. The Chancellor of the New York City Department of Education.

Chancellor's Committee on Contracts. A committee composed of representatives of DOE's Division of Contracts and Purchasing, Office of Legal Services, Office of Auditor General and other offices whose duty is to review and provide recommendations on proposed procurements as required by these Procedures.

Chief Administrator. An individual with the title of Chief Administrator within the Division of Contracts and Purchasing of the New York City Department of Education.

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Chief Information Officer. The Chief Information Officer of the New York City Department of Education.

Chief Operating Officer. The Chief Operating Officer of the New York City Department of Education.

City. The City of New York.

Comptroller. The Comptroller of the City of New York.

Concession. A grant made by the DOE for the private use of property that is City-owned or leased by the DOE for which the DOE receives compensation other than in the form of a fee to cover administrative costs, except that concessions shall not include franchises, revocable consents and leases.

Construction. The process of building, reconstructing, rehabilitating, converting, altering, extending, improving, repairing or demolishing DOE real property or other DOE public improvements.

Corporation Counsel. The Corporation Counsel of the City of New York or his/her designee.

Cost Analysis. The process of examining the reasonableness of a vendor's price by evaluation of the separate cost elements and proposed profit in part on the basis of cost data supplied and certified by the vendor. Cost analysis may be used on contract actions (including contract changes) where price cannot be determined as fair and reasonable by using price analysis alone.

DOE. The New York City Department of Education.

Day(s). Calendar day unless otherwise specifically stated in the applicable procedure.

E-Catalog. The DOE's intranet catalog and ordering system for contracted goods and services.

Executive Director. The Executive Director of the Division of Contracts and Purchasing of the New York City Department of Education.

Franchise. A grant made by the DOE of a right to occupy or use the inalienable property of the City to provide a public service.

Full Value Contract. A contract under which a contractor is reimbursed for services or goods at agreed upon prices as set forth in the contract. It is permissible for certain services or goods to be paid for on a requirements basis in a full value contract, i.e. a "hybrid." In such hybrid contracts, the corresponding budgets must be separately delineated.

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Goods. All tangible personal property, including but not limited to equipment, materials, and printing, excluding interests in land.

General Counsel. The General Counsel of the New York City Department of Education.

Grant. A cash transfer made by the DOE to another government entity, a quasi-public entity, a private organization, or an individual, for use by the recipient in accomplishing objectives established by the recipient. A grant is permissible only to accomplish a public purpose authorized by federal, State, or City law. A grant may be conditional, although awarded without other consideration. Federal and State grants are identified specifically by formula or specific allocations in law or in the annual operating budget act, bond authorizations, or other acts of Congress or the state legislature. Grants can be distinguished from procurement contracts, which call for the vendor to produce specific end products or to deliver specific goods, services or construction. While there are requirements under a grant that result in an executed agreement between the grantor and grantee, this document is not a contract for services.

Head of Office. Any person who officially manages or oversees an office, bureau or division of the New York City Department of Education.

In Ink. A provision specifying the use of a pen to satisfy all signature and initialing requirements. Wherever these Procedures provide that an action be taken "in ink," this requirement may be satisfied, if provided for in the solicitation, through the use of electronic signatures.

In Writing. Paper or electronic documents, as defined in the solicitation, unless otherwise stated.

Mayor. The Mayor of the City of New York.

MWBE. Minority and Women's Business Enterprise; a business concern authorized to do business in the State of New York, including sole proprietorships, partnerships, and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens who are (a) either minority group members or (b) women, (ii) the ownership interest of such person is real, substantial, and continuing, and (iii) such persons have and exercise the authority to control independently the day-to-day business decisions of the enterprise.

Multiple Task Award Contract (MTAC). A requirements contract that is distinguished by the following features: (1) multiple vendors are awarded contracts for the same or similar services; (2) the contract does not specify a quantity of services or, where applicable, a location or specific recipient of the services to be provided (instead the solicitation or contract may indicate, for example, that students in certain grades are targeted recipients, however, specific school(s) are not stated); and (3) usage of the contract is through a streamlined process for placing orders for the performance of tasks during the period of the contract. MTAC's are awarded where there is a demand for a service among multiple schools/offices, it is necessary to contract with multiple

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vendors to meet the demand, and it is efficient to offer schools/offices a choice of service providers at specified unit prices and a streamlined ordering process.

Notice of Award. The process of notifying successful vendors of an intended contract award.

Office. The term office encompasses any unit, office, department, bureau, division or any other recognized subdivision within the Department of Education except schools.

Office of Equal Opportunity. The Office of Equal Opportunity of the New York City Department of Education.

Panel for Educational Policy (Panel). The board of education of the city school district of the City of New York consisting of thirteen appointed members as set forth in the New York State Education Law Section § 2590-b of Article 52-A.

Prevailing Market Price. Prices commonly paid by the public, such as a standard price list or catalogue.

Price Analysis. The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Examples of price analysis techniques that may be appropriate to use to determine whether a proposed price is fair and reasonable include, but are not limited to, comparing proposed prices received in response to a solicitation; comparing current proposed prices to prior proposed prices and contract prices; applying rough yardsticks, i.e., rough order of magnitude (e.g., dollars/lb., price/horsepower), to a proposed price to highlight inconsistencies that would warrant further review; comparing proposed prices with competitive price lists, published market prices of commodities, similar indexes, discounts or rebate arrangements, and comparing proposed prices with cost estimates prepared by DOE personnel charged with cost estimating.

Principal. The Principal of a school in the New York City public school system.

Procurement. Buying, purchasing, or otherwise acquiring any goods, services, or construction. It also includes all functions that pertain to the obtaining of any goods, services or construction, including planning, description of requirements, solicitation and selection of sources, preparation and award of contract, and all phases of contract administration, including receipt and acceptance, evaluation of performance, and final payment.

Procurement Manager. Any person duly authorized to perform procurement activities and make determinations with respect thereto. The term also includes an authorized representative acting within limits of authority.

Purchase Order. An official document of the DOE directing the vendor to perform. The purchase order is used to provide delivery and/or service provision instructions, which may include, quantity, delivery location, delivery or performance schedule, as well as accounting data.

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Request for Proposals (RFP). All documents, whether attached or incorporated by reference, used for soliciting competitive proposals.

Request for Bids (RFB). All documents, whether attached or incorporated by reference, utilized in soliciting bids. Usually used in connection with Competitive Sealed Bidding.

Requirements Contract. A contract under which a contractor commits to fulfill the DOE's needs as requested by the DOE for certain services or goods at specified unit prices during the term of the contract.

Sealed Bid. A bid that has been submitted in response to a Request for Bids in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids. If so provided in the RFB, sealed bids may be submitted electronically, provided they are submitted in a manner that prevents the contents being revealed or known prior to the date and time set for opening of bids.

Services. The furnishing of labor, time, or effort by a vendor. This term shall not include employment agreements or collective bargaining agreements. The term services as used in these Procedures includes construction-related services, which are those services that may reasonably be required in the planning, design or construction of real property or other public improvements.

Special Commissioner for Investigation (SCI). The New York City Special Commissioner of Investigation for the New York City School District.

State. State of New York.

Superintendent. A Superintendent of the New York City Department of Education.

Time. Unless otherwise stated in these Procedures, time shall be designated in calendar days.

VENDEX. A computerized Citywide system providing comprehensive contract management information.

Vendor. An actual or potential contractor.

## Section 1-03 APPLICABILITY OF PROCEDURES.

(a) General Applicability. Except as otherwise provided by law, these Procedures shall apply to the procurement by the DOE of all goods, services and construction to be paid for with DOE funds or out of monies under the control of the DOE.

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(b) Procurement Requirements Prescribed by Entities External to the DOE or Other Applicable Law. These Procedures shall not apply to procurements to the extent that a source of funds outside the DOE, a federal or State statute or rule, the terms of a court order or consent decree, or other applicable law expressly authorizes or requires that the procurement be made from a specified source or that a provision of these Procedures is not applicable. All other provisions of these Procedures shall apply to such procurements.

(c) Procurements Funded by Line Item Appropriations or Discretionary Funds. The source selection requirements of these Procedures shall not apply to contract awards made from line item appropriations and/or discretionary funds to community-based not-for-profit organizations or other public service organizations identified by elected City officials other than the Mayor and the Comptroller. All other provisions of these Procedures shall apply to such procurements.

(d) Concessions.

(1) These Procedures shall apply to concessions with the following changes:

(i) The terms "contract," "contractor" and "vendor" shall encompass concessions and those who are parties to such agreements with the DOE.

(ii) The terms "low," "lower" and "lowest" in the context of price bid or proposed (for example, "the lowest bidder") shall be replaced with "high," "higher," and "highest".

(iii) Where reference is made to the terms "purchase," "procurement," "cost" and "expenditure," in the context of a dollar amount associated with a threshold for an action (for example, "all purchases greater than $25,000 shall be approved by…") such term shall be replaced by "concessions where the estimated or actual amount to be received is," or other language appropriate in the context that conveys that the amount specified relates to the amount of funds to be paid to the DOE by the concessionaire.

(2) The following sections of these Procedures shall not apply to concessions:

(i) Section 1-04 Purchases Through DOE Contracts;

(ii) Section 2-10 Circumstances for Procuring Technical, Consultant or, Personal Services;

(iii) Section 2-12 Cost Reimbursement Contracts;

(iv) Section 3-04 Multiple Task Award Contract Process;

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(v) Section 3-06 Listing Application;

(vi) Section 3-07 Sole Source Goods Procurement;

(vii) Section 3-11 Purchases Through Governmental Contracts;

(viii) Section 3-14 Government-to-Government Purchases;

(ix) Section 3-15 Consultant Contracts with Individuals; and

(x) Section 4-04 Vendor Payment.

(e) Transactions Not Subject to These Procedures. These Procedures shall not apply to the following transactions, except as otherwise required by law or where directly referenced in these Procedures:

(1) grants or contracts between the DOE and other governments or any public authority or public benefit corporation except as provided by the Government-to-Government Purchase procedure;

(2) the provision of work or services by public utilities regulated by the New York State Public Service Commission (such as local telephone service, electric light and power, gas, water, and steam) for which the rates charged to customers have been tariffed in accordance with the provisions of the Public Service Law, or for which there are no practical competitive alternatives;

(3) the provision of cable television services or other public service regulated by the New York State Public Service Commission, or any interstate public utility regulated by either the Federal Energy Regulatory Commission or the Federal Communications Commission.

(4) memberships in professional associations; and

(5) subscriptions, including electronic subscriptions, for magazines and periodicals, "off-the-shelf" training videotapes, attendance at standard commercially available seminars and at conferences.

(f) Severability. If any provision of these Procedures or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of these Procedures that can be given effect without the invalid provision or application, and to this end the provisions of these Procedures are declared to be severable.

(g) Ratification of Minor Procedures Violations.

(1) Prior to Registration. If, prior to registration, it is determined by the Executive Director that a procurement is in violation of these Procedures and the violation had no significant impact on the competitive process

then, as soon as practicable after discovery, the Executive Director shall either:

(i) revise the procurement to comply with these Procedures, or

(ii) if the minor Procedures violation(s) cannot be corrected to comply with these Procedures, the Executive Director may ratify the procurement provided it is in the best interest of the DOE to do so, and provided such ratification will not violate any law applicable to the procurement process. Such ratification shall include the justification(s) therefor.

(2) After Registration. If, after registration, it is determined that a procurement is in violation of these Procedures:

(i) if the selected vendor has not acted fraudulently or in bad faith:

(A) the minor Procedures violation may be ratified and the procurement affirmed, provided it is determined by the Executive Director that doing so is in the best interests of the DOE; such determination and approval shall include the justification(s) therefor, or

(B) the procurement may be terminated by the Executive Director and the selected vendor shall be compensated in accordance with applicable law or contract terms.

(ii) if the selected vendor has acted fraudulently or in bad faith:

(A) the procurement may be declared null and void by the Executive Director who shall retain the option to exercise the DOE's rights to suspend the vendor and to recover all payments made for such a procurement even when the DOE retains the goods, services, or construction provided by the vendor; in such event the vendor's name shall be submitted to the Mayor's Office of Contract Services to be entered as a caution in the VENDEX database, or

(B) the minor Procedures violation may be ratified and the procurement affirmed, provided it is determined by the Executive Director that doing so is in the best interests of the DOE, including the reasons therefor. Such ratification shall not prejudice the DOE's rights to damages as may be appropriate.

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(3) Public Notice.

Notice of the ratification of a minor Procedures violation shall be posted on the DOE's website in a location that is accessible by the public within thirty days after the Executive Director's determination. Such notice shall include the name of the vendor (where applicable); a brief description of the goods, services or construction procured; the dollar amount; and the duration of the contract.

(h) General Delegability of Authority. Unless otherwise provided by law, these Procedures, or other DOE policy or procedure, the Chancellor, Chief Operating Officer, General Counsel and Executive Director may delegate any authority vested in that official by these Procedures in writing to other DOE officials or employees having the knowledge and experience necessary to exercise such authority in the DOE's interest.

(i) Transition. These Procedures shall govern contract-related actions taken after the effective date of these rules. To the extent practicable, contracts where the procurement process was initiated prior to [TBD], but where the contract was executed after [TBD], shall be awarded pursuant to the provisions of these Procedures.

## Section 1-04 PURCHASES THROUGH DOE CONTRACTS.

(a) Policy. Where practicable, the Executive Director shall establish contracts for goods and services in accordance with these Procedures through which all DOE schools and offices may procure such goods and services as needed. All DOE schools and offices must procure goods and services through existing contracts when such contracts meet the requirements of the school or office except as provided in subsection (c) below.

(b) Required Goods or Services Not Available Through a Contract. If a good or service required by a DOE school or office is not available through an existing contract, then the good or service shall be procured pursuant to one of the methods of source selection set forth in Chapter 3 of these Procedures. Where such goods or services are anticipated to cost more than $25,000, the school Principal or Head of Office shall submit a request to the DOE Division of Contracts and Purchasing to procure the goods or services on their behalf. For anticipated expenditures $25,000 or less the Principal or Head of Office shall procure directly the non-contracted goods or services utilizing one of the methods of source selection in Chapter 3 of these Procedures.

(c) Special Provisions for Schools and Superintendents. State Education Law Section 2590-h 36 (b)(ii) permits schools and Superintendents to purchase material goods, supplies and services directly from vendors when such products are available at prices or other terms more economically beneficial than what is available under existing DOE contracts for the purposes of the acquiring school or Superintendent.

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(1) Process.

(i) If the school Principal or Superintendent believes that a contracted good or service can be procured for a lower price or under terms more economically beneficial than what is available under the existing contract, the Principal or Superintendent shall procure such goods, supplies or service utilizing one of the methods of source selection in Chapter 3 of these Procedures.

(A) Should the Principal or Superintendent utilize the simplified procurement process in Section 3-10 of these Procedures, which includes the requirement that three bids/proposals be solicited, the Principal or Superintendent may solicit two bids/proposals from vendors and may utilize the DOE contracted vendor's price, as stated in the DOE's E-Catalog, to satisfy the requirement for the solicitation of a third bid/proposal.

(ii) The Principal or Superintendent shall notify the Executive Director in writing of the reasons for not utilizing a contract where a contract exists for the required goods or services. The notification shall also include a description of the goods or services procured, the vendor's name and pricing, and, where applicable, an explanation of the terms obtained which are more economically beneficial than those offered under a contract.

(2) All other provisions of these Procedures shall apply to purchases made directly by schools and Superintendents.

(3) In order to ensure the compatibility and safety of software, hardware and other equipment that attaches to or accesses the DOE's network, servers and infrastructure, Principals and Superintendents must obtain approval from the Chief Information Officer or his/her designee prior to making such purchases from a non-contracted vendor.

## Section 1-05 ETHICS.

(a) Department of Education employees responsible for the expenditure of taxpayer dollars and members of the Panel for Educational Policy have a responsibility to ensure that their conduct will not violate the public trust placed in them. They must make certain that their conduct does not raise suspicion or give the appearance that they are in violation of their public trust. DOE employees with responsibility for procurement and contract administration at all levels shall encourage competition, prevent fraud, favoritism, and corruption, and obtain the best value in the interest of the DOE and the taxpayers and ensure fair, competitive access to DOE procurement opportunities to a broad cross-section of responsible vendors.

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(b) DOE employees and members of the Panel for Educational Policy shall:

(1) place professional responsibilities above personal interests;

(2) deal with the public and with vendors with courtesy, consideration, and even-handedness;

(3) use information gained confidentially in the performance of DOE and DOE-related duties solely in the DOE's interest;

(4) refrain from disclosing information gained in the performance of DOE and DOE-related duties where the DOE's interests may be compromised; and

(5) report corruption and unethical practices, wherever and whenever discovered, to the appropriate official, and/or take such other action as is warranted by the situation.

(c) In soliciting, awarding, or administering a procurement, or approving a contract, under no circumstances may a DOE employee, official or Panel for Educational Policy member take into consideration the fact that a vendor or associated individual(s) has or has not made or promised to make a campaign contribution.

(d) Vendors and their representatives have a responsibility to deal ethically with the DOE and its employees, and to respect the ethical duties of DOE employees. Information provided by vendors to the DOE must be complete and accurate. Vendors must at all times avoid conduct that is in restraint of competition. Vendors must not request DOE employees to engage in conduct that would violate the law, these Procedures, or the principles set forth in this section.

(e) When there is doubt as to whether conduct is prohibited by Chapter 68 of the New York City Charter and Chancellor's Regulation C-100 governing conflicts of interest, employees and members of the Panel shall seek guidance from the DOE Ethics Officer or the New York City Conflicts of Interest Board.

## Section 1-06 EQUAL OPPORTUNITY.

(a) Policy. It is the policy of the DOE to promote equal employment opportunity for women and minority group members by DOE contractors and subcontractors and to ensure that all persons employed or seeking employment with such contractors and subcontractors are protected from unlawful discrimination based upon race, color, creed, ethnicity, national origin, religion, alienage and citizenship status, age, marital status, disability, sexual orientation, gender (sex) including sexual harassment or prior record of arrest or convictions (except as permitted by law), predisposing genetic characteristics, or status as a victim of domestic violence, sexual

offenses, or stalking and to maintain an environment free of harassment or retaliation, with regard to all employment decisions.

(b) Office of Equal Opportunity. In order to promote the full realization of equal opportunity through an affirmative, continuing program of compliance by all contractors, subcontractors, suppliers and vendors doing business with the DOE, the Office of Equal Opportunity (OEO) is responsible for the implementation and administration of this policy. The Executive Director of OEO is responsible for issuing all orders, rules, regulations, and procedures as may be deemed necessary or convenient for carrying out and implementing the policy set forth above.

(c) Affirmative Action Plan. Vendors who seek to do business with the DOE must have in place an acceptable written Affirmative Action Plan (AAP) in accordance with the instructions in the solicitation or as directed in writing by the DOE.

## Section 1-07 MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE).

The DOE shall take measures to enhance the ability of MWBE's to compete for contracts and to ensure their meaningful participation in the procurement process. Such measures shall include but are not limited to:

(1) Wherever feasible, participate in and implement outreach initiatives, such as, conferences, contractor fairs and other forums held to enhance the ability of minority- and women-owned business enterprises to compete for DOE contracts.

(2) Make reasonable efforts to include MWBE's in bidder lists.

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# CHAPTER 2
# PROCUREMENT PROCESS

## Section 2-01 EXECUTIVE SUMMARY.

(a) Description. The Executive Summary provides a summary of the pertinent details of a planned solicitation and, upon approval as specified herein, authorizes the Procurement Manager to release the solicitation. The Executive Summary shall include the following:

(1) description of goods, services or construction to be purchased;

(2) estimated amount of the contract;

(3) term of the contract;

(4) source of funding;

(5) source selection method;

(6) number of contracts planned to be awarded; and

(7) discussion of any notable issues related to the procurement.

(b) Circumstances for Use. The Executive Summary shall be prepared in consultation with the requesting office prior to release of a solicitation or notice of intent for contracts and concessions greater than $25,000 where the source selection method is:

(1) competitive sealed bidding;

(2) request for proposals;

(3) multiple task award contracts;

(4) expedited competitive solicitation;

(5) sole source goods procurement;

(6) demonstration projects for innovative products, approaches, or technologies;

(7) innovative procurement methods; or

(8) government-to-government purchases.

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(c) Approval. The Executive Summary shall be approved by the Chancellor as follows:

(1) The following procurements greater than $100,000:

(i) expedited competitive solicitation;

(ii) demonstration projects for innovative products, approaches, or technologies; and

(iii) innovative procurement methods.

(2) The following procurements greater than $1,000,000:

(i) competitive sealed bidding;

(ii) request for proposals;

(iii) multiple task award contracts;

(iv) sole source goods procurement; and

(v) government-to-government purchases.

## Section 2-02 SPECIFICATIONS.

(a) Policy. Specifications are used to obtain goods, services and construction to fulfill the DOE's needs in a cost-effective manner, taking into account, to the extent practicable, the costs of ownership and operation, as well as costs of acquisition. Therefore, specifications shall:

(1) permit maximum practicable competition;

(2) describe clearly the DOE's requirements without favoritism toward a vendor;

(3) to the extent practicable, be generic in nature and emphasize functional or performance criteria, while limiting design or other detailed physical descriptions to those necessary to meet the DOE's needs; and

(4) to the extent practicable, utilize accepted commercial standards, and limit unique requirements that would tend to favor a vendor.

(b) Authority to Contract for Drafting of Specifications. The drafting of specifications may be performed by a vendor only upon a determination by the Executive Director that it is in the best interest of the DOE to do so. Any vendor participating in the drafting of specifications shall not participate, in any manner, in a

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response to any subsequent solicitation utilizing such specifications, in whole or in part, a vendor or such vendor's good or service, unless, after reviewing the specifications, the Executive Director determines that the specifications do not favor a vendor or such vendor's good or service, and it is in the DOE's best interest to allow such participation and the basis thereof. Such prohibited participation shall include, but not be limited to, participating as a contractor or a subcontractor, or as a consultant to any contractor or subcontractor, responding to the solicitation using the specifications. The provisions of this subdivision shall apply to any vendor that has drafted any portion of the specifications used in a procurement, regardless of whether such vendor's services were procured specifically for the drafting of those specifications, were procured as general consulting services, or were donated.

(c) Brand Name Specifications. When a brand name only specification is used, the Executive Director shall document the reasons for its use. When brand name or equal specifications are used, one or more brand name(s) and the salient characteristics of the brand name(s) shall be set forth in the solicitation.

## Section 2-03 PRICE/COST ANALYSIS.

Prior to vendor selection, the Chief Administrator shall determine that the contract price is fair and reasonable. In making this determination the Chief Administrator may use price analysis and/or cost analysis, as these terms are defined in these Procedures.

## Section 2-04 RESPONSIVENESS OF BIDS/PROPOSALS.

(a) Policy. A responsive bid or proposal is one that complies with all material terms and conditions of the solicitation and all material requirements of the specifications. A determination of responsiveness shall be made prior to award.

(b) Determination of Non-Responsiveness. If the lowest price bid or any proposal is found non-responsive, a determination, setting forth in detail and with specificity the reasons for such finding, shall be made. A copy of such determination shall be delivered to the non-responsive vendor as soon as practicable following such determination and sufficiently in advance of an award determination so as to provide at least ten business days to protest before an award determination is made. The DOE shall inform the vendor of the right to protest the non-responsiveness determination in accordance with Section 2-06 of these Procedures.

(1) Authority to Make Determination. The individual making the determination of non-responsiveness shall be as follows:

(i) for simplified procurements, the Procurement Manager;

(ii) for all procurements $100,000 or less, except simplified procurements, the Chief Administrator; and

(iii) for procurements greater than $100,000, the Executive Director.

(c) Standards. Factors affecting the responsiveness of bids or proposals include:

(1) compliance with all material requirements of the specification;

(2) compliance with all material terms and conditions of the solicitation;

(3) submission of bids or proposals in the form specified in the solicitation including all required signatures, in ink, and including all required pricing information;

(4) if a bid or proposal price has been materially altered, alterations must be initialed in ink by the bidder or proposer. If the alteration has not been initialed in ink, and can be severed from the other items in the bid or proposal, then that particular item only may be considered non-responsive;

(5) submission of bids or proposals by the time and date and at the place specified in the solicitation except that a late proposal may be accepted pursuant to these Procedures;

(6) submission of samples, literature, or other information, if required by the solicitation;

(7) submission of all required disclosure statements; and

(8) attendance at a mandatory pre-bid or pre-proposal conference or site inspection.

(d) Rejection of Bids or Proposals. Bids or proposals that are determined to be non-responsive shall be rejected.

(e) Protest. Vendors may protest non-responsive determinations as set forth in Section 2-06 of these Procedures.

## Section 2-05 VENDOR RESPONSIBILITY.

(a) Policy. Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. The award of a contract to a contractor based on lowest evaluated price alone can be false economy if there is subsequent default, improper or exaggerated claims, late deliveries, or other unsatisfactory performance resulting in additional contractual and administrative costs. While it is important that DOE purchases be made at the lowest price, this does not require an award to a

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contractor solely because that contractor submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when applicable, the responsibility of its proposed subcontractors.

(b) General Standards.

(1) A responsible contractor is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of a DOE contract.

(2) Factors affecting a contractor's responsibility may include:

(i) financial resources;

(ii) technical qualifications;

(iii) experience;

(iv) organization, material, equipment, facilities, and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments;

(v) a satisfactory record of performance;

(vi) a satisfactory record of business integrity; and

(vii) where the contract includes provisions for reimbursement of contractor costs, the existence of accounting and auditing procedures adequate to control property, funds, or other assets, accurately delineate costs, and attribute them to their causes.

(3) Failure of a vendor to provide relevant information specifically requested by the DOE may be grounds for a determination of non-responsibility.

(c) Special Standards.

(1) When it is necessary for a particular contract or class of contracts, the Procurement Manager shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that certain minimum experience or specialized facilities are needed for adequate contract performance.

(2) Such special standards shall be set forth in the solicitation and shall apply to all bidders/proposers.

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(3) Special standards must be based on demonstrated need and must not be used to artificially limit competition.

(d) Ability to Meet Standards.

(1) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(i) evidence that such contractor possesses such necessary items;

(ii) acceptable plans to subcontract for such necessary items; or

(iii) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(e) VENDEX Questionnaire.

(1) Definitions. For purposes of this section only, the following definitions apply:

Affiliate. An entity in which the parent of the contractor owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the contractor also owns more than fifty percent of the voting stock.

Contract. Any agreement between the DOE and a contractor, or any agreement between such a contractor and a subcontractor which is for the provision of goods, services or construction or is a franchise or concession and has a value of $100,000 or more when aggregated with the values of all other such agreements with the same contractor or subcontractor awarded to such contractor or subcontractor during the immediately preceding twelve-month period.

Contractor. All individuals, sole proprietorships, partnerships, joint ventures, or corporations who enter into a contract, as defined herein, with the DOE.

Officer. Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known.

Parent. An individual, partnership, joint venture, or corporation which owns more than fifty percent of the voting stock of a contractor.

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Principal Owner. An individual, partnership, joint venture, or corporation which holds a ten percent or greater ownership interest in a contractor or subcontractor.

Subcontract. Any contract, as defined herein, between a subcontractor and a contractor.

Subcontractor. An individual, sole proprietorship, partnership, joint venture, or corporation which is engaged by a contractor pursuant to a contract, as defined herein.

Vendor. Vendor is encompassed within the meaning of "contractor."

(2) Obligation to File Questionnaires. VENDEX questionnaires shall be completed and filed by the contractor with the New York City Mayor's Office of Contract Services at least once within each three year period within which such contractor does business with the City. Each contractor shall certify at the time of award of each contract that all the information submitted within such three year period is current, accurate and complete. In the event that changes have occurred within the three year period, the contractor shall update, prior to contract award, any previously-submitted VENDEX questionnaire to supply any changed information, and shall certify that both the updated and unchanged information is current, accurate and complete. If VENDEX questionnaires have not been submitted within three years, then such questionnaires shall be completed and filed by:

(i) contractors, when requested by the DOE, but in any event before the contract is awarded or not later than:

(A) thirty days after registration of the contract in the case of a contract of any value if the aggregate value of contracts, franchises, and concessions awarded to that contractor including this one during the immediately preceding twelve-month period equals or exceeds $100,000, and

(B) thirty days after registration of the contract, where permitted pursuant to paragraphs (3) and (4) of this subdivision.

(ii) subcontractors, within thirty days after the DOE has received from the prime contractor written notification of the identity of the proposed subcontractor and granted preliminary approval, if the aggregate value of contracts, franchises, and concessions awarded to that subcontractor including this one during the immediately preceding twelve-month period equals or exceeds $100,000.

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(3) Late Filing of Information: When Permitted. The VENDEX questionnaire may be submitted within thirty days after registration of the contract as provided in paragraph (4) of this subdivision in the following circumstances:

(i) emergency procurements as defined by Section 3-09 of these Procedures;

(ii) on a contract-by-contract basis where the Chief Administrator has determined that expedited procurement action is required;

(iii) buy-against procurements where the contractor has not previously submitted a VENDEX questionnaire; and

(iv) on a contract-by-contract basis where the Chief Administrator has determined that a specific portion of the information is not accessible to the contractor despite good faith efforts to complete the filing in a timely fashion. The determination shall set forth with particularity the information which may be submitted late and the reasons for the later completion of the filing, and shall include the specific date by which the information shall be submitted.

(4) Late Filing of Information: Required Findings. In the circumstances set forth in paragraph (3) of this subdivision, the VENDEX questionnaire may be submitted after registration of the contract, provided that:

(i) the contractor has been notified in writing by the DOE of its obligation to submit the VENDEX questionnaire as set forth in subdivision (e)(2) above;

(ii) the Chief Administrator has determined that sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility prior to receipt of the questionnaire; and

(iii) in addition, where the basis for the delayed submittal is an expedited procurement action due to urgent circumstances, the Chief Administrator must provide a separate additional determination setting forth the specific documented reasons it is not feasible for the contractor to complete all or some specific portion of the VENDEX questionnaire as set forth in subdivision (e)(2) above. The Chief Administrator's determination shall include the name and telephone number of the authorized representative of the contractor who provided information on which the Chief Administrator relied in making the non-feasibility determination.

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(5) Exemption: Information Not Required. On a contract-by-contract basis, where a contractor demonstrates compelling reasons that it is not feasible to supply a specifically identified portion of information which is required by the questionnaire, the Executive Director may exempt a contractor from the requirement to supply that portion of the required information, upon the review of:

(i) the efforts to obtain the required information;

(ii) the name and telephone number of the authorized representative of the contractor who made the request for exemption on behalf of the contractor;

(iii) the information to be covered by the exemption;

(iv) the compelling reasons why an exemption should be granted in this case, including why the circumstances are such that it is in the best interests of the DOE that the contract be awarded to this contractor; and

(v) the basis for finding that sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility absent the exempted information.

(6) Exemption: Listing Application and Sole Source. In the case of a specific contract awarded in accordance with the listing application provision of Section 3-06 or the sole source goods procurement provision of Section 3-07 of these Procedures where a contractor refuses to supply some portion of the required information, but the need for the goods or services is such that it is in the best interests of the DOE that the contract be awarded, the Executive Director may exempt the contractor from the requirement for some specifically identified portion of information upon review of:

(i) the efforts to obtain the required information;

(ii) the name and telephone number of the authorized representative of the contractor who refused, on behalf of the contractor, to supply the required information;

(iii) the information to be covered by the exemption;

(iv) the reasons why an exemption should be granted in this case; and

(v) the basis for finding that sufficient information concerning the prospective contractor is otherwise available to permit the determination of responsibility absent the exempted information.

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(7) Reporting Requirement for Late Filings and Exemptions. A copy of the written determination permitting late filing of required information pursuant to subdivision (e)(3) and (4) of this section, or granting an exemption pursuant to subdivision (e)(5) and (6) of this section shall be filed with the Comptroller as soon as practicable after it is made.

(8) Contract Terms and Conditions.

(i) Late Filing. Whenever the DOE has permitted the filing of some or all of the required information within thirty days after the registration of the contract, the contract shall contain a clause requiring the submission of the required information within the required time period as a material term and condition of the contract and permitting termination without penalty to the DOE for violation of the condition, or in the event that the DOE determines on the basis of the belatedly filed information that it is in the best interest of the DOE to terminate the contract.

(ii) Subcontractors. Where appropriate, DOE contracts shall contain a clause requiring prime contractors to notify subcontractors of their obligation to complete and file VENDEX questionnaires with the New York City Mayor's Office of Contract Services within thirty days after the Chief Administrator has granted preliminary approval of the identified subcontractor, if the aggregate value of contracts, franchises, and concessions awarded to the subcontractor during the immediately preceding twelve-month period equals or exceeds $100,000.

(9) Failure to Submit Information as Required. Whenever a late filing of required information has been permitted in accordance with subdivision (e)(3) and (4) of this section and the contractor has failed to submit the required information within the required time period, the Executive Director may take action with respect to such contract or contractor including, but not limited to, suspension of payment.

(f) Responsibility Determination.

(1) Various sources of information are available to support determinations of responsibility, and different standards shall apply depending on the value of the contract.

(i) For procurements $250 to not greater than $100,000 the DOE shall review vendor background information as available and appropriate.

(ii) For procurements greater than $100,000 to not greater than $1,000,000 the DOE shall conduct a review which may include the following:

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(A) information regarding the Special Commissioner for Investigation's completed investigations of which the DOE has official knowledge;

(B) information known to the DOE regarding the vendor;

(C) the VENDEX database of debarred, suspended, and ineligible contractors;

(D) VENDEX and other records of evaluations of performance, as well as verifiable knowledge of contracting and audit personnel; and

(E) information supplied by the prospective contractor, including but not limited to, bid or proposal information, VENDEX and pre-qualification replies, financial data, information on production equipment, and personnel information.

(iii) For procurements greater than $1,000,000, the DOE shall supplement its review with sources of information which may include:

(A) the vendor's federal, New York State and City tax filing status;

(B) the federal debarment list and Excluded Parties List system;

(C) Westlaw and/or Lexis-Nexis and/or Clear and/or other on-line systems;

(D) determinations of violations of employment-related federal, State, or local law or executive order, including but not limited to those relating to equal employment opportunity, prevailing wage, workplace health and safety, employee benefits, and employee wages and hours; and

(E) other sources such as publications, suppliers, subcontractors and customers of the prospective contractor, financial institutions, other government agencies, and business and trade associations.

(2) The Procurement Manager may notify the bidder or offeror of unfavorable responsibility information and provide the bidder or offeror an opportunity to submit additional information or explain its actions before adverse action is taken by the DOE.

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(g) Determination of Non-Responsibility Required.

(1) If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, the Executive Director shall make a determination setting forth in detail and with specificity the reasons for the finding of non-responsibility.

(2) A copy of the determination of non-responsibility shall be immediately sent to the non-responsible bidder or offeror. Notice to the non-responsible bidder or offeror must be delivered as soon as practicable following such determination and sufficiently in advance of an award determination so as to provide at least ten business days to protest before an award determination is made. The DOE shall inform the vendor of the right to protest the non-responsibility determination in accordance with Section 2-06 of these Procedures.

(3) The DOE shall submit all final determinations of non-responsibility (including after protest, if any, upholding a determination of non-responsibility) to the New York City Mayor's Office of Contract Services for inclusion in the VENDEX database.

## Section 2-06 VENDOR PROTEST.

a) Protest.

(1) Any vendor may protest a determination in any procurement action pursuant to this section unless another appeal or protest provision is provided in these Procedures. Emergency procurements and simplified procurements are not subject to vendor protests.

(2) Protests are to be sent to the Executive Director who will designate an individual not involved with the procurement to act as the Protest Officer to evaluate and make a recommendation for disposition of the protest. The Protest Officer will issue a response to the protestor reflecting such recommendation.

(3) Contract awards cannot be made until resolution of the protest, unless the Executive Director decides otherwise as described in subsection (c) below.

(4) If a protestor decides to withdraw its protest for any reason, the Procurement Manager will document the procurement file accordingly and memorialize this in writing to the potential protestor.

(5) The Protest Officer may seek input as he or she deems appropriate, including a recommended disposition from individuals

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previously involved in the procurement, including but not limited to the Procurement Manager.

(6) Protest submissions should be factual, complete, concise, logically arranged and clearly state all grounds for the protest.

(7) All protests should include the following information:

(i) Name, address, telephone and facsimile numbers of protestor;

(ii) Solicitation or contract number;

(iii) Detailed statement of the legal and/or factual grounds of protest, including copies of relevant documents; and

(iv) Statement as to what relief is requested.

(8) If a vendor has already been selected for the procurement, the Procurement Manager shall, upon receipt of the protest, deliver a copy of the protest to the selected vendor.

(9) The Protest Officer, at his/her sole discretion, may hold a hearing, conduct interviews, request written or oral submissions from the selected vendor (if any) or any other interested party, request the submission of material samples, or take any other actions he/she deems necessary in making a recommendation/disposition concerning the protest.

(10) The Protest Officer will provide a copy of the protest recommendation to the Executive Director for review.

(11) The Protest Officer's recommendation may be adopted or overruled by the Executive Director within ten business days. Failure to make a determination within ten business days shall be deemed an adoption of the Protest Officer's recommendation. The decision of the Executive Director shall be deemed a final agency action.

(12) The Protest Officer shall promptly transmit the final determination to the protestor and any other party he/she deems likely to be affected by the determination, as well as to the person who designated him/her and, as appropriate, the Procurement Manager responsible for the procurement. No consideration will be given to additional protests by the vendor on the subject matter of the original protest.

(b) Time for Filing Protests with DOE. Protests with respect to any aspect or decision of DOE shall be filed within ten business days from the date the protestor knew or should have known the facts forming the basis of such protest and no later than ten days after publication of the notice of award.

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(c) Award of Contract Prior to Protest Determination.

(i) The Executive Director may determine that an award must be made prior to resolution of the protest when the Executive Director determines that:

(A) The items to be procured are urgently required; or

(B) Delivery or performance will be unduly delayed by failure to make the award promptly; or

(C) Failure to make prompt award will otherwise cause undue harm to DOE.

(ii) The Procurement Manager will give written notice to the protestor when a decision has been made by the Executive Director to proceed with the award prior to the protest determination.

## Section 2-07 REQUEST FOR AUTHORIZATION.

(a) Application. The Request for Authorization summarizes the procurement process and documents determinations and internal DOE approvals associated with the award of a contract or concession. The Request for Authorization shall be prepared for all contracts, concessions, contract changes and contract extensions except:

(1) contracts, concessions, contract changes and contract extensions that do not exceed $25,000 ($15,000 if let by competitive sealed bidding); and

(2) simplified procurements pursuant to Section 3-10 of these Procedures.

(b) Content. The Request for Authorization shall contain, but not be limited to, the following information, as applicable:

(1) name of vendor(s) and address(es);

(2) description of services to be provided;

(3) dollar amount(s) of contract(s);

(4) funding source;

(5) contract term;

(6) if applicable, renewal terms and associated amount(s);

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(7) source selection method;

(8) contract type, i.e., full value or requirements;

(9) name and contact information of service requestor;

(10) name and contact information of Procurement Manager;

(11) summary of responsiveness and responsibility determinations;

(12) basis for award;

(13) justification for procuring technical, consultant or personal services pursuant to Section 2-10; justification for awarding concessions pursuant to Section 2-11 of these Procedures; and the justification for utilizing a source selection method other than competitive sealed bidding in accordance with Section 3-01 of these Procedures; and

(14) all other applicable written determinations and written justifications required by these Procedures.

(c) Approval. The Request for Authorization shall be approved as follows:

(1) Chief Administrator.

(i) competitive sealed bids greater than $15,000 to not greater than $1,000,000 where there was more than one bidder and where the lowest bidder was selected; and

(ii) purchases through governmental contracts greater than $25,000 to not greater than $100,000.

(2) Executive Director.

(i) competitive sealed bids greater than $15,000 to not greater than $100,000 where there was only one bidder;

(ii) competitive sealed bids greater than $15,000 to not greater than $1,000,000 where the lowest bidder was not selected due to a finding of non-responsiveness or non-responsibility;

(iii) competitive sealed bids greater than $1,000,000 to not greater than $5,000,000 where there was more than one bidder and where the lowest bidder was selected;

(iv) contract extensions for no additional cost and for a period exceeding one hundred eighty days, and contract extensions for a

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cumulative total amount greater than $25,000 to not greater than $250,000;

(v) contract changes for a cumulative total amount greater than $25,000 to not greater than $250,000;

(vi) expedited competitive solicitation, sole source goods, negotiated services, and demonstration projects greater than $25,000 to not greater than $100,000; and

(vii) all other procurements greater than $25,000 to not greater than $250,000.

(3) Chancellor.

(i) competitive sealed bids greater than $100,000 where there was only one bidder;

(ii) competitive sealed bids greater than $1,000,000 where the lowest bidder was not selected due to a finding of non-responsiveness or non-responsibility;

(iii) competitive sealed bids greater than $5,000,000 where there was more than one bidder and where the lowest bidder was selected;

(iv) contract extensions for a cumulative total amount greater than $250,000;

(v) contract changes for a cumulative total amount greater than $250,000;

(vi) expedited competitive solicitation, sole source goods, negotiated services, and demonstration projects greater than $100,000;

(vii) all procurements utilizing innovative procurement methods; and

(viii) all other procurements greater than $250,000.

(4) All Requests for Authorization that require the Chancellor's approval shall additionally be approved by the Executive Director, the General Counsel, and the head of the office requesting the procurement prior to submission to the Chancellor.

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## Section 2-08 PANEL FOR EDUCATIONAL POLICY APPROVAL.

(a) Application.

(1) Contracts. Except in cases set forth in subsection (b) below, the Panel for Educational Policy shall approve the award of contracts by the DOE where:

(i) such contract was let by a procurement method other than competitive sealed bidding;

(ii) such contract provides for technical, consultant or personal services;

(iii) the value of such contract exceeds, or projects an annual expenditure exceeding one million dollars; or

(iv) the value of any contracts awarded to a single entity exceeds one million dollars annually.

(2) Franchises, Revocable Consents and Concessions. Except in cases set forth in subsection (b) below, the Panel for Educational Policy shall approve the award of franchises, revocable consents and concessions by the DOE.

(b) Exemptions. The following are exempt from the requirements of this section:

(1) contracts with the United States General Services Administration or any other federal agency if the price is lower than the prevailing market price;

(2) contracts with the New York State Office of General Services or any other State agency if the price is lower than the prevailing market price; or

(3) any contract made directly by an individual school.

(c) Panel Meetings.

(1) Public Notice. Notice of the time, place and agenda for all regular public meetings shall be publicly provided, including via the Panel's official internet website, and specifically circulated to all community superintendents, community district education councils, community boards and school based management teams at least ten business days in advance of such meeting.

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(2) Agenda. The regular public meeting agenda shall include, among the Panel's other items of business, a list and brief description of all contract items presented by the DOE for the Panel's vote.

(3) Public Comment. The Chair of the Panel shall ensure that at every regular public meeting there is a sufficient period of time to allow for public comment on any topic on the agenda prior to any Panel vote.

(4) Panel Vote. All items requiring Panel approval shall be approved by a public vote at a regular public meeting, and such items may not become effective until after such vote occurs except as authorized in subsection (f) of this section. Approval of items shall be by a majority vote of the whole Panel.

(5) Meeting Minutes. Minutes of all of the Panel's regular public meetings shall be made publicly available, including via the Panel's official internet website.

(d) Blanket Approval by the Panel. The following purchases may be approved by the Panel by standard type of class, subject to any conditions stated in the approval:

(1) all purchases with an annual value of $25,000 or less made in accordance with these Procedures;

(2) all purchases through contracts of the City of New York and its agencies in accordance with Section 3-11 herein;

(3) the provision of work or services by public utilities regulated by the New York State Public Service Commission (such as local telephone service, electric light and power, gas, water, and steam) for which the rates charged to customers have been tariffed in accordance with the provisions of the Public Service Law, or for which there are no practical competitive alternatives; and

(4) the provision of cable television services or other public service regulated by the New York State Public Service Commission, or any interstate public utility regulated by either the Federal Energy Regulatory Commission or the Federal Communications Commission.

(e) Term. Panel approval of the award of a contract shall include all renewals and extensions as authorized in these Procedures.

(f) Emergencies. In the event that the Panel or the Chancellor determines that immediate adoption of a contract requiring Panel approval is necessary for the preservation of student health, safety or general welfare and that compliance with the requirements of subsection (c) of this section would be contrary to the public interest, then such proposed item may be adopted on an emergency basis. The Chancellor shall provide written justification for such determination and shall make such justification

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publicly available, including via the Panel's official internet website. All emergency adoptions of contracts shall remain in effect for no more than sixty days, during such time the DOE shall present such contract to the Panel for approval in accordance with subsection (c) of this section. If the Panel does not approve the contract, the DOE shall terminate the emergency contract and the contractor will be paid for services provided up to the date of termination.

## Section 2-09 CONTRACT REGISTRATION.

(a) Applicability. Unless otherwise provided by law or these Procedures, all contracts, franchises, revocable consents and concessions shall be presented to the Comptroller for registration. Registration of a contract by the Comptroller shall not constitute an approval of the contract nor an approval of the process by which the contract or agreement was awarded.

(b) Registration Not Required. Registration is not required for purchase orders used to make purchases pursuant to requirements contracts that have been registered with the Comptroller.

(c) Documentation. The following documentation shall be submitted for each item required to be registered:

(1) a copy of the executed contract, franchise, revocable consent or concession;

(2) certification of legal authority by the Corporation Counsel;

(3) certification of procedural requisites;

(4) written justification for the basis, including the efficiency, benefit and necessity, for awarding a contract using procurement methods other than competitive sealed bidding, and for awarding technical, consultant or personal services contracts, franchises, revocable consents or concessions; and

(5) written determination of the basis for an emergency procurement, where applicable.

(d) Date of Filing. The date of filing shall be the date by which all materials required in subdivision (c) above have been delivered to the Comptroller.

(e) Exceptions. The requirement for registration prior to the effectiveness of the contract is waived for contracts awarded on an emergency basis. For such contracts the DOE shall, as soon as practicable, submit a copy of the contract and such related materials as are included in subdivision (c) of this section to the Comptroller for registration.

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(f) Refusal of Comptroller to Register the Contract. This Section 2-09 of these Procedures neither enlarges nor reduces the Comptroller's authority to refuse to register or delay registration of a contract. Subject to the provisions of subdivision (g) of this section, the Comptroller shall register a contract within thirty days of the date of filing unless:

(1) there remains no unexpended and unapplied balance of the appropriation or fund applicable thereto sufficient to pay the estimated expense of executing such contract, as certified by the officer making the same; or

(2) the certifications provided for in (c)(2) and (c)(3) of this section have not been provided; or

(3) the contractor has been debarred by the City.

Upon making a determination that there is a basis for refusing to register the contract for one of the reasons set forth in this subdivision, the Comptroller shall promptly notify the Executive Director of that determination and return the contract to the Executive Director.

(g) Objection to Registration Raised by the Comptroller. The Comptroller may, within thirty days of the date of filing of the contract, franchise, revocable consent or concession with his or her office, object in writing to the registration of such contract or agreement, if in the Comptroller's judgment there is sufficient reason to believe that there is possible corruption in the letting of such contract or agreement or that the proposed contractor is involved in corrupt activity. Such objection shall be delivered within such thirty day period to the Mayor setting forth in detail the grounds for the Comptroller's determination. The Mayor may require registration of the contract or agreement despite the Comptroller's objections if the Mayor has responded to the Comptroller's objections in writing, indicating:

(1) the corrective actions if any, that have been taken or will be taken in response to the Comptroller's objections, or

(2) the reasons why the Mayor disagrees with the Comptroller's objections.

Such response by the Mayor shall not serve as the basis for further objection by the Comptroller, and the Comptroller shall register the contract, franchise, revocable consent or concession within ten days of receipt of the Mayor's response.

## Section 2-10 CIRCUMSTANCES FOR PROCURING TECHNICAL, CONSULTANT, OR PERSONAL SERVICES.

(a) Circumstances under which technical, consultant or personal services may be procured include:

(1) desirability of developing, maintaining, or strengthening the relationships between non-profit and charitable organizations and the communities where services are to be provided;

(2) cost-effectiveness;

(3) the necessity to

(i) obtain special expertise, or

(ii) obtain personnel or expertise not available in the DOE, or

(iii) provide a service not needed on a long-term basis, or

(iv) accomplish work within a limited amount of time, or

(v) avoid a conflict of interest; or

(4) such other reason as determined to be in the best interest of the DOE by the Executive Director, Principal or Head of Office, as applicable.

(b) A determination justifying the basis, including the efficiency, benefit and necessity, for awarding a technical, consultant or personal services contract shall be made in writing.

## Section 2-11 JUSTIFICATION FOR FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS.

For all franchises, revocable consents and concessions awarded by the DOE, the Procurement Manager shall make a written justification for the basis, including the efficiency, benefit and necessity for awarding such franchise, revocable consent or concession.

## Section 2-12 COST REIMBURSEMENT CONTRACTS.

A cost reimbursement contract shall be used only when the Chief Administrator determines that it will be less costly to the DOE than any other type of contract or that it is otherwise in the best interests of the DOE to obtain the required goods, services or construction by using such a contract, and that the proposed vendor's accounting system is adequate to allocate costs in accordance with generally accepted government accounting principles and will permit timely development of all necessary cost data in the format required. In addition, whenever a cost-plus-percentage-of-cost contract is used, it shall specify the maximum allowable expenditure.

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# CHAPTER 3
# METHODS OF SOURCE SELECTION

## Section 3-01 POLICY.

(a) Methods of Source Selection. Unless otherwise authorized by law, all DOE procurements shall be made by one of the methods below:

(1) Competitive sealed bidding;

(2) Request for proposals;

(3) Multiple task award contract process;

(4) Expedited competitive solicitation;

(5) Listing application;

(6) Sole source goods procurement;

(7) Negotiated Services;

(8) Emergency purchases;

(9) Simplified procurement;

(10) Purchases through governmental contracts;

(11) Demonstration projects for innovative products, approaches, or technologies;

(12) Innovative procurement methods;

(13) Government-to-government purchases; or

(14) Consultant contracts with individuals.

(b) Preference for Competitive Sealed Bidding. Except as otherwise provided in these Procedures, contracts shall be awarded by competitive sealed bidding.

(c) Circumstances for Alternatives to Competitive Sealed Bidding. Circumstances are recognized by these Procedures in which it is not practicable or not advantageous to the DOE to use competitive sealed bidding for reasons which may include:

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(1) specifications cannot be made sufficiently definite and certain to permit selection based on bid price or evaluated bid price alone;

(2) judgment is required in evaluating competing proposals, and it is in the best interest of the DOE to require a balancing of price, quality, and other factors;

(3) there is only one available source, as set forth in these Procedures;

(4) testing, experimentation, or evaluation is required to determine the feasibility and application of an innovative product, approach, or technology not currently used by the DOE;

(5) time constraints require procuring the services of a vendor quickly such that negotiation with a limited pool of qualified vendors is efficient and beneficial to the DOE;

(6) circumstances justifying the use of non-competitive service procurement as set forth in these Procedures;

(7) it is efficient to utilize contracts with City, State or federal agencies where the goods, services or construction are available through such contracts and the price is lower than the prevailing market price;

(8) an emergency condition exists creating an immediate need for goods, services or construction to be procured without delay; or

(9) a simplified procurement process pursuant to these Procedures is appropriate for low dollar amount purchases.

(d) Justification for Alternative Source Selection Method. Upon determining that there is a situation which warrants awarding a contract using alternatives to competitive sealed bidding where competitive sealed bidding is not practicable or not advantageous, the Procurement Manager shall use the most competitive alternative method of procurement provided for in Section 3-01(a) of these Procedures which is appropriate under the circumstances. The Procurement Manager shall make a written determination justifying the basis, including the efficiency, benefit and necessity, for awarding a contract using a procurement method other than competitive sealed bidding.

## Section 3-02 COMPETITIVE SEALED BIDDING.

(a) Application. Competitive sealed bidding is the preferred method of procurement where specifications can be made sufficiently detailed and exact to permit award of a contract, solely on the basis of price, to the lowest responsive and responsible bidder.

(b) Request for Bids.

(1) Use. The RFB is used to initiate a competitive sealed bid procurement.

(2) Content. The RFB shall include the following:

(i) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids; requirements for the electronic submission of bids, if any; and the address where bids are to be delivered;

(ii) time, date, and location of any pre-bid conferences and a statement whether such conferences are mandatory;

(iii) the purchase description, delivery and performance schedule, and any special instructions necessary;

(iv) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable;

(v) a statement that award shall be made to the lowest responsive and responsible bidder;

(vi) a provision that bidders should give specific attention to the identification of those portions of their bids that they deem to be confidential proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the DOE. Such information must be easily separable from the non-confidential sections of the bid;

(vii) the invoicing requirements and payment policies;

(viii) a provision concerning the submission and consideration of alternate bids, if applicable;

(ix) a notice that contract award is subject to provisions of all applicable laws;

(x) where applicable, a notice that contract award is subject to completion of a VENDEX questionnaire;

(xi) the DOE contact information to whom questions and correspondence relating to the bid solicitation can be addressed; and

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(xii) the following statements:

(A) Any vendor who believes that there has been unfairness, favoritism, or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007, (212) 669-2323; and

(B) Reports of criminal misconduct or conflicts of interest associated with the bid process shall be directed to the Special Commissioner of Investigation for the New York City School District, 80 Maiden Lane, 20th Floor, New York, NY 10038, (212) 510-1500.

(c) Multiple Awards. In order to ensure that the DOE's needs are adequately met, the Department may award contracts to multiple vendors through one solicitation. Award may be by geographic location, category of goods, services or construction, or in some other manner. In such instances, the RFB shall state the number of contracts anticipated to be awarded, the manner in which the goods, services or construction will be divided among the contracts and, where multiple contracts are awarded within one geographic location, category or other grouping, the process for determining which contractor(s) will receive order(s). Award shall be made to the lowest responsive and responsible bidder in each instance.

(d) Bidding Time. Bidding time is the period of time between the date of public advertisement of the RFB and the time and date set for receipt of bids. The bidding time shall be no less than five days before the date specified for the bid opening.

(e) Bidder Submissions. The RFB shall provide a form on which the bidder shall insert the bid price, and shall sign and submit along with all other necessary submissions. Bids shall be typewritten or written legibly in ink. Erasures or alterations shall be initialed by the signer in ink. All bids shall be signed in ink. The request for bids also shall require that the bid be submitted in a sealed envelope, addressed as required in the bid documents, on or before the time and at the place designated in the bid documents. If so provided in the solicitation, sealed bids may be submitted electronically.

(f) Public Notice.

(1) Notice of Solicitation.

(i) Distribution. RFBs or notices of their availability shall be distributed at least five days in advance of the bid opening date to all vendors on the applicable bidders list for the purpose of securing competition. Notices of availability shall indicate, at minimum:

(A) title and brief description of the goods, services or construction required;

(B) how, when, and where the RFB is available;

(C) the time, date, and location of any pre-bid conference or site visit, if any, and if attendance is mandatory;

(D) the date, time, and location for the receipt and opening of bids; and

(E) contact information.

(ii) Publication. In accordance with New York State Education Law Section 2556 10-a, this subparagraph shall apply to competitive sealed bids greater than $15,000.

(A) Frequency. Notice of solicitation shall be published at least once in the City Record and shall be simultaneously posted continuously on the DOE's website until the bid due date in a location that is accessible by the public not less than five days before the bid opening date.

(B) Content. Such notice shall include:

((a)) title and brief description of the goods, services or construction required;

((b)) how, when, and where the RFB is available;

((c)) the time, date, and location of any pre-bid conference or site visit, if any;

((d)) the time, date, and location for the receipt and opening of bids; and

((e)) contact information

2) Notice of Award.

(i) Frequency. Notice of award for contracts greater than $15,000 shall be posted once on DOE's website in a location that is accessible by the public within thirty days after registration of the contract.

(ii) Content. Such notice shall include:

(A) purchase description;

(B) name of the vendor;

(C) dollar value of the contract;



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(D) method of source selection; and

(E) contract term.

(g) Bidders' Lists.

(1) Lists of vendors interested in being solicited for bids may be compiled and maintained by the DOE. Bidders lists shall be classified by standard categories of goods, services and construction that are sufficiently detailed to provide meaningful distinctions among categories. Bidders lists shall include the names, addresses, EIN, and telephone numbers of the vendors, and, if known, minority and women vendor status as certified by the NYC Department of Small Business Services. The DOE shall make reasonable efforts to ensure inclusion of minority and women's business enterprises on its bidders lists.

(2) Application by vendors for placement on the DOE's bidders lists shall be continuously available through the DOE's website.

(3) Vendors that fail to respond to solicitations or notices of availability of procurement opportunities on three consecutive invitations within one standard category may be removed by the Chief Administrator from the applicable bidders list after notice to the vendor. Additionally, vendors may be removed from a DOE bidders list pursuant to procedures prescribed by the Executive Director. In either case, application for reinstatement shall be the responsibility of the vendor. A "No Bid" statement on a returned bid shall be considered a response.

(4) Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate that the business is responsible in respect to a particular procurement or otherwise is capable of successfully performing a DOE contract.

(h) Pre-Bid Conferences. Pre-bid conferences may be conducted by the DOE to explain the procurement requirements. Notice of pre-bid conferences shall be provided to all prospective vendors. A pre-bid conference should be held long enough after the RFB has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the RFB unless a change is made by amendment as provided in this section. A summary of the conference shall be prepared and shall be a public record. A record of attendance shall be kept of all conferences.

(i) Amendments to RFBs.

(1) Form. Each amendment to an RFB shall be identified as such. The amendment shall reference the portion of the RFB it amends.

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(2) Distribution. Amendments shall be sent to all prospective vendors known to have received an RFB and posted on the DOE's website.

(3) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective vendors to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent practicable, and stated in the amendment or, if necessary, by electronic mail, facsimile, or telephone and confirmed in the amendment.

(j) Pre-Opening Modification or Withdrawal of Bids. Bidders may modify or withdraw their bids by written notice received in the office designated in the RFB before the bid due date and time.

(k) Late Bids. Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered.

(1) Exception. A late modification of a successful bid that makes its terms more favorable to the DOE shall be considered at any time it is received and may be accepted upon approval of the Executive Director.

(l) Receipt, Opening, and Recording of Bids.

(1) Receipt. Upon its receipt, each bid and modification shall be time- and date-stamped, but not opened, and stored in a secure place until the time and date set for bid opening. Before bid opening the DOE may not disclose the identity of any bidder.

(2) Opening and Recording. Bids shall be opened publicly, at the time, date, and place designated in the RFB. The name of each bidder, the bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available. This information also shall be recorded at the time of bid opening. The bids shall be tabulated or a bid abstract prepared and such tabulation or bid abstract shall be made available for public inspection. Additionally, the opened bids shall be available for public inspection at a reasonable time after bid opening but in any case before vendor selection except to the extent the bidder designates trade secrets or other proprietary data to be confidential. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes, and models or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available regardless of any designation of confidential data by the bidder. Where the bidder has not designated trade secrets or other proprietary data within the bid, the entire bid document may be made available.

(3) Confidential Data. Non-disclosure of trade secrets or other proprietary data is permissible only if approved by the General Counsel or

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his/her designee. Any decision not to honor a request for confidentiality shall be communicated in writing to the bidder making the submission.

(m) Mistakes in Bids.

(1) General. Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible, but only to the extent that it is not contrary to the interest of the DOE or the fair treatment of other bidders.

(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 3-02(j) of these Procedures.

(3) Confirmation of Bid. When the Procurement Manager knows or has reason to conclude after bids have been publicly opened that a mistake has been made, such manager shall request from the bidder written verification of the bid. If the bidder alleges mistake, the bid may be corrected or withdrawn upon approval of the Executive Director if the following conditions are met:

(i) Minor Informalities. Minor informalities are matters of form, rather than substance, evident from the bid document or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Procurement Manager may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the DOE. An example is the failure of a bidder to return the number of signed bids required by the RFB.

(ii) Mistakes Where Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(iii) Mistakes Where Intended Correct Bid is Not Evident. Such mistakes may not be corrected after bid opening. A bidder may be permitted to withdraw a low bid where a unilateral error or mistake has been discovered in the bid and the Procurement Manager

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makes the following determination, which shall be approved by the Executive Director:

(A) the mistake was known or made known to the DOE prior to vendor selection or within three days after the opening of the bid, whichever period is shorter;

(B) the price bid was based on an error of such magnitude that enforcement would be unconscionable;

(C) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;

(D) the error in bid is actually due to an unintentional and substantial arithmetic error or unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and

(E) it is possible to place the DOE in the same condition that had existed prior to the receipt of the bid.

Upon the approval of the Executive Director, the bid may be withdrawn. The contract shall either be awarded to the next lowest bidder or resolicited pursuant to these Procedures. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

(4) Mistakes Discovered After Vendor Selection. Mistakes shall not be corrected after vendor selection except where the Procurement Manager, subject to the approval of the Executive Director, makes a determination that it would be unconscionable not to allow the mistake to be corrected.

(5) Determinations Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Executive Director shall prepare a determination showing that the relief was granted or denied in accordance with these Procedures.

(n) Withdrawal of Bids. In addition to the provisions set forth in Sections 3-02(j) and 3-02(m) of these Procedures, a bidder may be allowed to withdraw its bid upon the written approval of the Executive Director. Otherwise, a bidder may not withdraw its bid before the expiration of one hundred twenty days after the date of the opening of bids unless otherwise provided by law; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award.

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(o) Bid Evaluation and Vendor Selection.

(1) General. The responsible bidder whose bid meets the requirements and objectively measurable evaluation criteria set forth in the RFB, and whose bid price is the lowest responsive bid price or, if the RFB has so stated, the lowest responsive evaluated bid price, shall be selected for the contract. A bid shall not be evaluated for any requirement or criterion that is not disclosed in the RFB.

(2) Negotiation with the Apparent Lowest Responsive and Responsible Bidder. Upon determination of the apparent lowest responsive and responsible bidder and prior to award, the Procurement Manager may elect to open negotiations with the selected vendor in an effort to improve the bid to the DOE with respect to the price only. In the event the apparent lowest responsive and responsible bidder declines to negotiate, the Procurement Manager may elect to either award the contract to the apparent lowest responsive and responsible bidder or may reject all bids in accordance with Section 3-02(t) herein. The result of negotiations, if any, shall be documented.

(3) Award. Any contract awarded shall be to the lowest responsive and responsible bidder.

(p) Low Tie Bids.

(1) Definition. Low tie bids are low responsive bids from responsible bidders that are identical in price, meeting all the requirements and criteria set forth in the RFB.

(2) Vendor Selection. In the case of low tie bids, the Executive Director shall break the tie in the following order of priority:

(i) Select a certified New York City small, minority or woman-owned business entity bidder;

(ii) Select a New York City bidder;

(iii) Select a certified New York State small, minority or woman-owned business bidder;

(iv) Select a New York State bidder;

(v) Conduct a drawing. Tie bidders shall be invited to witness the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

(3) Record. A record shall be made of tie bids received, and the method used to break the tie.

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(q) Single Bid. When a single bid has been received in response to an RFB, a vendor may be selected only after the Executive Director has determined that a sufficient number of other potentially responsive vendors have had a reasonable opportunity to bid; why, as a result of inquiries made by the DOE, other vendors chose not to submit bids; that the bid submitted meets minimum requirements of the RFB; that the price is fair and reasonable; and that resolicitation is not in the best interest of the DOE.

(r) Alternate Bids. Unless alternate bids are permitted in the solicitation, such bids may not be accepted.

(s) Selection of Other Than Lowest Bidder. If the Executive Director determines that the lowest bidder is either not responsible or not responsive, the lowest bidder shall be notified in writing of such determination and the reasons therefor, and the right to protest, if applicable, in accordance with these Procedures. A copy of the notification shall be retained in the contract file.

(t) Rejection of Bids. The Executive Director may reject all bids and may elect to resolicit in accordance with this section or by another method authorized by these Procedures when it is determined in the best interest of the DOE to do so.

(u) Disposition of Bids. All bids shall be retained. When bids are rejected or a solicitation canceled after bids are received, the bids shall be retained and the bid security, if any, shall be promptly returned, and the file so documented.

## Section 3-03 REQUEST FOR PROPOSALS.

(a) Application. The Request for Proposals (RFP) method should be utilized when it is not possible to fully detail the scope of work to be provided, and when it is necessary to evaluate proposals on a number of factors including experience, staffing, suitability for needs and quality of vendor, in addition to price. Contracts are awarded to the vendors whose proposals are determined to be the most advantageous to the DOE.

(b) Contents. RFPs shall include the following:

(1) a statement that the contract award will be made to the responsible proposer whose proposal is determined to be the most advantageous to the DOE taking into consideration the price and such other factors or criteria that are set forth in the RFP;

(2) statement of work or scope of services statement, performance requirements, and any special instructions;

(3) the specific criteria and the relative weight of each criterion or category of criteria that will be used to evaluate the proposals;

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(4) proposal submission requirements including requirements, if any, for the electronic submission of proposals;

(5) the time and date after which proposals will not be accepted as well as location of proposal submission;

(6) delivery dates or time frames within which the work must be completed;

(7) the DOE's payment policies;

(8) if applicable, a request for a description of experience in the line of work being considered, including references;

(9) if applicable, a request for a description of staff capability along with the resumes of key individuals who will work on the contract;

(10) if applicable, request for cost breakdown of the proposed price and other financial data deemed necessary to support the proposed prices;

(11) a notice that although discussions may be conducted with offerors submitting acceptable proposals, award may be made without any discussions;

(12) if applicable, provision on the submission and consideration of multiple or alternate proposals;

(13) a notice that contract award is subject to provisions of all applicable laws;

(14) if applicable, a notice that contract award is subject to completion of a VENDEX questionnaire;

(15) DOE contact information; and

(16) the following statements:

(A) Any vendor 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 1005, New York, NY 10007, (212) 669-2323; and

(B) Reports of criminal misconduct or conflicts of interest associated with the proposal process shall be directed to the Special Commissioner of Investigation for the New York City School District, 80 Maiden Lane, 20th Floor, New York, NY 10038, (212) 510-1500.

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(c) Multiple Awards. The Department may award contracts to multiple vendors through one solicitation. Award may be by geographic location, category of goods or services, or in some other manner. In such instances, the RFP shall state the number of contracts anticipated to be awarded, the manner in which the goods or services will be divided among the contracts and, where multiple contracts are awarded within one geographic location, category or other grouping, the process for determining which contractor(s) will receive order(s).

(d) Proposal Preparation Time and Form. Proposal preparation time shall be set to provide vendors a reasonable time to prepare their proposals. The manner in which proposals are to be submitted, including any forms for that purpose, shall be designated as a part of the RFP.

(e) Public Notice.

(1) Notice of Solicitation.

(i) Distribution. RFPs or notices of their availability shall be distributed to all vendors on the applicable bidders list at least ten days prior to the due date.

(ii) Publication. Notice of solicitation shall be published at least once in the City Record at least ten days prior to the due date and shall be simultaneously posted on the DOE's website until the proposal due date in a location that is accessible by the public.

(A) Content. Such notice shall include:

((a)) title and brief description of the goods or services required;

((b)) how, when, and where the RFP is available;

((c)) the time, date, and location of any pre-proposal conference or site visit, if any;

((d)) the time, date and location for the receipt of proposals; and

((e)) contact information.

(2) Notice of Award.

(i) Frequency. Notice of award for contracts greater than $25,000 shall be posted once on DOE's website in a location that is accessible by the public within thirty days after registration of the contract.

(ii) Content. Such notice shall include:

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(A) purchase description;

(B) name of the vendor;

(C) dollar value of the contract;

(D) method of source selection; and

(E) contract term.

(f) RFP Handling Procedures.

(1) Pre-Proposal Conferences. Pre-proposal conferences may be conducted in the manner set forth in Section 3-02(h) of these Procedures.

(2) Proposal Submission. The request for proposals shall require that the proposal be submitted in a sealed envelope, addressed as required in the RFP, on or before the time and at the place designated in the RFP. If so provided in the solicitation, sealed proposals may be submitted electronically.

(3) Amendments to RFPs. Amendments to RFPs may be made in the manner set forth in Section 3-02(i) of these Procedures.

(4) Modification or Withdrawal of Proposals Prior to Proposal Due Date. Proposers may modify or withdraw their proposals prior to the established due date in the manner set forth in Section 3-02(j) of these Procedures. The established due date is the time and date announced for receipt of proposals.

(5) Late Proposals. Any proposal received after the established due date and time at the place designated for receipt is late and may be accepted only in the manner set forth below.

(i) Handling and Acceptance of Late Proposals. A late proposal may only be accepted when it is determined by the Executive Director that it is in the best interest of the DOE to do so. In such event, the Executive Director may permit receipt of proposals by no more than three hours after the original proposal submission time during which time no proposal may be opened. Additionally, the Executive Director, upon written approval of the Chief Operating Officer, may permit receipt of proposals by longer than three hours, but not later than the original submission time on the next business day. Such approval may be given by the Chief Operating Officer only where the need for permitting receipt of late proposals arises from generally applicable emergency circumstances, such as weather or transit emergencies. An opened proposal shall eliminate the option of accepting any late proposal. Where it has

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been determined that late proposals shall be accepted, any other late proposal received during the period of extension shall be similarly accepted.

(ii) Documentation. The Procurement Manager shall, within one business day of such acceptance of late proposals, document the reasons that it is in the best interest of the DOE to approve the extension, the time extended, the name of any vendor(s) submitting a proposal received during the extension period established pursuant to paragraph (i) above, as well as an affirmative statement that no proposals were opened prior to the acceptance of the late proposal and that any other late proposal received during the period of extension was similarly accepted.

(6) Late Modification. A late modification of a selected proposal that makes its terms more favorable to the DOE shall be considered at any time it is received.

(7) Receipt and Registration of Proposals. The identity of an offeror shall not be disclosed prior to the established date and time for receipt of proposals. Proposals shall not be required to be opened publicly but shall be opened in the presence of two or more DOE employees. Proposals and modifications shall be time and date-stamped upon receipt and held in a secure place until the established due date and time. After the date and time established for the receipt of proposals, a register of proposals shall be prepared. It shall include for all proposals the name of each proposer and the number of modifications received, if any.

(g) Evaluation Process. Award, if any, must be made to the responsible proposer whose proposal is determined to be the most advantageous to the DOE, taking into consideration the price and such other factors or criteria that are set forth in the RFP. In evaluating the proposals, the DOE may consider only price and the criteria set forth in the RFP. In considering price, the DOE may use methods such as ranking technically viable proposals by price, evaluating price per technical point, or evaluating proposals in accordance with another combination of price and technical merit. Such methods may result in the selection of the highest technically rated proposer over another technically qualified proposer who offered a lower fee as a result of factors including, but not limited to, the selected vendor's superior technical skill and expertise, increased likelihood of timely completion, and/or ability to manage several projects simultaneously with lower overall costs to the DOE, including costs in DOE personnel time and consultants.

(1) Evaluation Committee. Proposals shall be reviewed by an evaluation committee consisting of no fewer than three persons with knowledge, expertise, and experience sufficient to make a fair and reasonable evaluation. If an RFP incorporates multiple competitions, each competition may be evaluated by a separate committee. Each member of the evaluation committee(s) shall be required to submit a signed statement, in a format approved by the General Counsel, agreeing to

prohibitions on any conflicts of interest. No committee member shall report to or supervise another committee member.

(i) Randomized evaluation process. If the Chief Administrator determines that such a high volume of competing proposals is likely to be received that it will be infeasible for each member of the evaluation committee to read each proposal, the Chief Administrator may, subject to the approval of the Executive Director, establish a pool of appropriate evaluators and then randomly assign each proposal to at least three such evaluators for review.

(ii) Outside Evaluators. The Executive Director may determine that it in the best interests of the DOE for the evaluation committee to include persons who are not employees of the DOE, provided however that such non-DOE employees may not constitute a majority of the evaluation committee.

(2) Rating Sheets. Rating sheets or other written evaluation forms shall be used to evaluate proposals and shall be signed and dated by all members of the evaluation committee. Initial ratings may be amended and the amended ratings recorded on amended rating sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained.

(3) Proposal Discussions with Individual Offerors. The evaluation committee shall evaluate all proposals and, at any time or times, may enter into discussions with proposer(s) whose proposals are deemed to be competitive, or reasonably likely to be made competitive based on the evaluation criteria. Vendors with whom discussions continue are considered to be in the competitive range and remain so until and unless the evaluation committee again re-evaluates proposals so as to further reduce the number of proposers with whom discussions continue and best and final offers may be requested. The elimination of any proposer from the competitive range will be determined by the evaluation committee and based on the evaluation criteria.

(4) Conduct of Discussions.

(i) If there is a need for any substantial clarification of, or change in, the RFP, the RFP must be amended to incorporate such clarification or change and shall be provided to all proposers in the competitive range.

(ii) Auction techniques (revealing one proposer's price to another) and disclosure of any information derived from competing proposals are prohibited.

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(iii) Any oral clarification of a proposal shall be confirmed in writing by the proposer.

(5) Best and Final Offers. Best and final offers are the revised and corrected final proposals submitted by proposers after discussions, if any, have been held.

(i) Best and final offers shall be submitted only once unless the Chief Administrator makes a determination that it is in the DOE's best interest to conduct additional discussions and/or require another submission of best and final offers.

(ii) The Chief Administrator may request best and final offers on the whole proposal or on any one or combination of its component parts (e.g., price, technical qualifications, approach, and/or capability). The request shall be the same for all proposers from whom a best and final offer is requested.

(iii) Best and final offers shall be evaluated in accordance with this subdivision.

(h) Single Proposal. When a single proposal has been received in response to an RFP, that proposal may be selected only after

(1) the Evaluation Committee has rated the proposal and deemed it to be acceptable in accordance with Section 3-03(g) of these Procedures; and

(2) the Executive Director has determined

(i) that a sufficient number of other potentially responsive proposers have had a reasonable opportunity to submit proposals;

(ii) why, as a result of inquiries made by the Department, other vendors chose not to submit proposals; and

(iii) that the price is fair and reasonable, and that resolicitation is not in the best interest of the DOE.

(i) Withdrawal of Proposals. After the receipt of proposals, a request by a proposer to withdraw its proposal because of an error made by the proposer will be considered only under the following terms and conditions.

(1) A written request to withdraw a proposal, including the reasons for the request, must be received by the DOE within three business days following the date and time set for the receipt of proposals;

(2) The Executive Director may grant or reject such request in any case which it deems just and proper;



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(3) The request shall be made and such consent to withdraw shall be granted, if so determined by the Executive Director, upon the express condition that the proposer shall be excluded from proposing again for the re-solicitation of proposals for the same contract should no award be made.

(4) Any request for a withdrawal of proposal within three business days must be accompanied by a certified check in the amount specified in the RFP to defray the cost of the processing. Such fees are non-refundable;

(5) Following the three business days after the proposal due date, a proposer may not withdraw its proposal for any reason before the expiration of one hundred twenty calendar days from the date of proposal opening of said proposal. A proposer may withdraw its proposal after that date only if such intent is stated in writing prior to the mailing by the DOE of a purchase order, notice of award, or acceptance of proposals.

(j) Vendor Selection and Documentation. In addition to the requirements set forth in Sections 2-10 and 3-01 of these Procedures with respect to the justification to procure technical, consultant and personal services and the justification to utilize a source selection method other than competitive sealed bidding, respectively, the Executive Director shall make a determination showing the basis on which the contract award was made to the responsible proposer whose proposal was determined to be the most advantageous to the DOE, taking into consideration the price and such other factors or criteria that are set forth in the RFP. Such determination shall be documented in the Request for Authorization.

## Section 3-04 MULTIPLE TASK AWARD CONTRACT PROCESS.

(a) Application. The multiple task award contract (MTAC) process allows the DOE to establish requirements contracts with multiple vendors to provide categories of defined services at discrete unit prices in order to ensure that demand for such services is met, and to offer schools and offices a choice among vendors from which such services may be quickly procured. All vendors who meet the minimum requirements are awarded multiple task award contracts. In the MTAC process, the solicitation is open-ended, thereby allowing new vendors the opportunity to qualify for MTACs after the initial solicitation.

(b) Determination. The Executive Director shall make a determination to use the multiple task award contract process.

(c) MTAC Solicitation Content. The MTAC solicitation shall include the following:

(1) statement of work or scope of services statement, performance requirements, and any special instructions;

(2) criteria and the relative weight of each criterion or category of criteria that will be used to evaluate vendors' responses;

(3) the minimum score that vendors must receive in order to qualify for award of a contract;

(4) if applicable, a request for a description of experience in the line of work being considered, including references;

(5) if applicable, a request for a description of staff capability along with the resumes of key individuals who will work on the contract;

(6) if applicable, request for cost breakdown of the proposed price and other financial data deemed necessary to support the vendor's prices;

(7) a notice that contract award is subject to provisions of all applicable laws;

(8) if applicable, a notice that contract award is subject to completion of a VENDEX questionnaire; and

(9) DOE contact information.

(d) Public Notice.

(1) Notice of Solicitation.

(i) Frequency. For each category of procurement for which the DOE maintains a pool of contractors or intends to establish a new pool of contractors, the DOE shall publish in the City Record at least once annually and shall simultaneously post on the DOE's website in a location that is accessible by the public a notice inviting vendors to apply for inclusion in the contract pools and describing how to obtain such solicitations. Application for inclusion in the contract pools shall be continuously available, however, the DOE may specify a deadline for submission in order to be included in the initial solicitation of contractors.

(ii) Content. The notice shall include the following:

(A) title and brief description of the services required;

(B) how, when, and where the MTAC solicitation is available;

(C) the time, date, and location of any solicitation conference, if any. A list of questions and answers from the solicitation conference shall be provided to all vendors who obtain the solicitation documents;

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(D) the process for submitting responses; and

(E) contact information.

(2) Notice of Award.

(i) Frequency. Notice of contract award shall be posted once on DOE's website in a location that is accessible by the public within thirty days after registration of each contract.

(ii) Content. Such notice of award shall include:

(A) purchase description;

(B) name of the vendor;

(C) dollar value of the contract;

(D) method of source selection; and

(E) contract term.

(e) Evaluation Process. Award of contracts shall be made to responsible vendors whose responses to the solicitation receive the minimum or better score as rated against the criteria that are set forth in the solicitation.

(1) Review Committee. Responses shall be reviewed by a committee consisting of no fewer than three persons with knowledge, expertise, and experience sufficient to make a fair and reasonable evaluation. Each member of the review committee shall be required to submit a signed statement, in a format approved by the General Counsel, agreeing to prohibitions on any conflicts of interest. No committee member shall report to or supervise another committee member. Review committee members shall use rating sheets or other written evaluation forms to score the submissions.

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(2) Discussions with Vendors. The DOE may enter into discussions with vendors for the purpose of:

(i) promoting an understanding of the DOE's requirements and the vendors' capabilities; and/or

(ii) obtaining the best price for the DOE.

(f) Ordering Process.

(1) Statement of Work Request (SOWR). The Procurement Manager of the DOE school or office using the MTAC shall develop an SOWR

which addresses the school's or office's specific needs and which may include:

(i) a brief description of the work required that is consistent with the scope of services of the MTAC;

(ii) where applicable, the target population to be served;

(iii) the timeframe in which services are to be provided; and

(iv) the criteria to be used in comparing contractors' services and selecting a contractor for work estimated to be greater than $25,000 only.

(2) Release of SOWR. The Principal or Assistant Principal or the Head of Office shall approve the SOWR and it shall be transmitted to the contractors identified by the DOE school/office plus additional contractors as necessary to fulfill the requirements in subparagraph (4) below.

(3) Contractor Statements of Work (SOW). Contractor SOW shall contain at a minimum:

(i) a description of the services to be provided; and

(ii) a detailed pricing proposal that addresses the school's or office's specific needs as stated in the SOWR. The price proposal must include unit prices that are equal to or lower than the pricing in the contractor's MTAC;

(4) Requirements for Requesting and Reviewing SOW. The requirements for requesting and reviewing SOW vary depending on the anticipated expenditures:

(i) $25,000 or less – the Procurement Manager of the school/office may obtain an SOW from one contractor. The Procurement Manager of the school/office shall review the SOW and verify that the SOW meets the school's or office's requirements.

(ii) Greater than $25,000 to $100,000 – SOW shall be requested from at least three contractors, two of which shall be selected by the Procurement Manager of the school/office and one shall be selected through an electronic system that automatically chooses vendors who are solicited on average less often than other contractors competing in the same pool. At least one person authorized by the Principal or Head of Office shall review the SOW.

(iii) Greater than $100,000 to $250,000 – SOW shall be requested from at least five contractors, three of which shall be

selected by the Procurement Manager of the school/office and two shall be selected through an electronic system that automatically chooses vendors who are solicited on average less often than other vendors competing in the same pool. At least three people, none of whom may report to any of the others, shall review the SOW.

(iv) Greater than $250,000 – proposals shall be solicited from all contractors in the category or subcategory, as appropriate. At least three people, none of whom may report to any of the others, shall review the SOW.

(v) Where the number of contracts in the pool is less than the number required to receive solicitations as indicated in (ii) and (iii) above, all contractors in the pool shall receive solicitations.

(5) SOW Review. Reviewers appointed by the Principal or Assistant Principal of the school or the Head of Office shall review and evaluate the SOW utilizing the selection criteria in the SOWR. The reviewers shall document their review of the SOW utilizing rating sheets which must capture the reviewer's name.

(6) SOW Discussions. At the discretion of the reviewer(s), contractors may be invited to discuss their SOW and pricing more fully.

(7) Selection of a Vendor.

(i) For anticipated expenditures $25,000 or less, the SOW shall be submitted to the Principal or Assistant Principal or Head of Office for approval;

(ii) For anticipated expenditures greater than $25,000, the reviewer(s) shall make a recommendation for the selection of a contractor based on the best overall SOW, taking price into account. The recommendation shall include a brief description of the rationale for the selection.

(8) Approval of Selection. The Principal or Assistant Principal or Head of Office shall approve the selection of the contractor before a purchase order is issued and the contractor commences services.

## Section 3-05 EXPEDITED COMPETITIVE SOLICITATION.

(a) Application. Expedited Competitive Solicitation may be utilized when time constraints require procuring the services of a vendor quickly and use of another source selection method would not be practicable and/or feasible. Under such circumstances, if there is a reasonable belief that competition exists in the marketplace, an expedited

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competitive solicitation process may be employed. Authority for approvals or determinations required herein shall not be delegated, unless otherwise stated herein.

(b) Procedure.

(1) The DOE may engage in preliminary discussions with a vendor to explore the feasibility of a proposed expedited competitive solicitation. Discussions are not negotiations for the selection of a vendor.

(2) The Executive Director shall make a determination that the use of expedited competitive solicitation is necessary.

(3) The Chancellor shall approve the use of the expedited competitive solicitation method for a particular procurement or for a particular type of procurement prior to the solicitation of vendors, where the estimated amount of such procurement is greater than $100,000.

(4) Public Notice. This subdivision shall apply to expedited competitive solicitation greater than $25,000, except where the Corporation Counsel or his/her designee has made a determination that such notice may disclose litigation strategy or otherwise impair the conduct of litigation by the DOE. The DOE shall solicit responses from as many vendors as is practicable.

(i) Frequency. Notice of intent to enter into negotiations shall be published in the City Record for five consecutive days and shall be posted simultaneously on the DOE's website in a location that is accessible by the public. The public notice shall remain on the DOE's website until responses are due. The last date of publications of such notice shall appear no fewer than seven days before negotiations are expected to begin.

(ii) Content. Such notice of intent shall include:

(A) purchase description;

(B) name(s) of the proposed vendor(s), if applicable;

(C) summary of the basis of the determination to use expedited competitive solicitation;

(D) projected contract start and expiration dates; and

(E) how vendors may express interest in the instant procurement or in such procurement in the future, as applicable.

(5) The DOE shall negotiate with all qualified vendors that have expressed interest unless the Executive Director determines for a



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particular procurement or for a particular type of procurement that it is in the DOE's best interest to negotiate with fewer, but no less than two, vendors, and the Chief Operating Officer approves such determination.

(6) The Executive Director or designee shall maintain a written record of the negotiations and the basis for the contract award.

(7) Contract(s) shall be awarded on the basis of best value to the DOE, including quality, experience and price.

(8) Notice of Award.

(i) Frequency. Notice of contract award shall be posted once on DOE's website in a location that is accessible by the public within thirty days after registration of the contract.

(ii) Content. Such notice of award shall include:

(A) purchase description;

(B) name of the vendor;

(C) dollar value of the contract;

(D) method of source selection; and

(E) contract term.

(c) Single Response. If there is a single response to the expedited competitive solicitation, such procurement shall be submitted to the Committee on Contracts and approved pursuant to Section 3-08(d) of these Procedures.

## Section 3-06 LISTING APPLICATION.

(a) Application. A listing application may be established for the purchase of content provided directly to students, materials that are available only from the publisher, artistic performances, and admission to programs offered by cultural institutions. It may also be established for the following:

(i) presentations or workshops where the cost is incidental to the entire expense of the contract and which are specifically geared to explain the methodology of a specific published/copyrighted item, or

(ii) admission to a cultural institution program that includes workshops or presentations where the cost is incidental to the entire expense of the contract and which are considered teaching tools that will enhance

the use of the original materials, performances or programs purchased.

These materials and services are considered unique as they can not be purchased by open, competitive means. Consequently, the purchase of these materials and services are not subject to competitive solicitation requirements of these Procedures..

(b) Establishing a Listing Application. If expenditures in a fiscal year are anticipated to exceed $25,000 on a system-wide basis for a particular vendor, the Executive Director may establish a listing application in order to achieve better value and to standardize pricing and contract conditions. A listing application shall be on a requirements basis.

(c) Review and Approval. Upon receipt of a listing application contract package, the Office of the Deputy Chancellor for Teaching and Learning shall review and certify that the materials and/or services are educationally appropriate and worthwhile.

(d) Notice of Award.

(1) Frequency. Notice of a contract award greater than $25,000 shall be posted once on DOE's website in a location that is accessible by the public within thirty calendar days after registration of the contract.

(2) Content. Such notice shall include:

(i) purchase description;

(ii) name of the vendor;

(iii) dollar value of the contract;

(iv) method of source selection; and

(v) contract term.

(e) Chancellor's Waiver of Procedures. At his discretion, the Chancellor may waive in writing other provisions of these Procedures.

## Section 3-07 SOLE SOURCE GOODS PROCUREMENT

(a) Application. Sole source goods procurement shall be used for the purchase of goods when there is only one source through which the goods can be purchased and when no other product is available in the marketplace that meets the same or substantially similar requirements of form, function and utility. Sole source contracts for goods may include installation, maintenance or other services associated with the proper use or operation of the goods where it is beneficial to the DOE to include

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such services in the contract. The price, terms and conditions shall be achieved through negotiation between the DOE and the vendor. This section shall apply to all sole source goods procurements over $250.

(b) Determination. Prior to entering into sole source negotiations, the Executive Director shall make a determination that sole source goods procurement is necessary in accordance with subsection (a) above. Such determination shall include a description of the process by which such determination was made.

(c) Public Notice.

(1) Notice of Intent to Enter into Sole Source Negotiations. If expressions of interest are received they shall be evaluated and, if it appears that the goods are available from more than one source, a solicitation shall be issued in accordance with these Procedures.

(i) Frequency. For sole source goods procurement greater than $25,000, notice of the intent to enter into negotiations shall be published in the City Record for five days no fewer than seven days before negotiations are expected to begin and shall be posted simultaneously on the DOE's website in a location that is accessible by the public. The public notice shall remain on the DOE's website until responses are due. Such notice shall solicit expressions of interest from vendors qualified to compete on that procurement or in the future.

(ii) Content. Such notice shall include:

(A) title and/or brief description of the goods procured;

(B) estimated quantity, if any;

(C) name of the proposed vendor;

(D) summary of the determination;

(E) how vendors may express their interest in providing such goods; and

(F) due date.

(2) Notice of Award.

(i) Frequency. Notice of a contract award greater than $25,000 shall be posted once on DOE's website in a location that is accessible by the public within thirty calendar days after registration of the contract.

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(ii) Content. Such notice shall include:

(A) purchase description;

(B) name of the vendor;

(C) dollar value of the contract;

(D) method of source selection; and

(E) contract term.

(d) Approvals. The award of all sole source goods contracts shall be approved as follows and shall not be delegated further:

(1) $25,000 or less – school Principal or Head of Office

(2) Greater than $25,000 to $100,000 – Executive Director

(3) Greater than $100,000 – Chancellor or his/her designee.

## Section 3-08 NEGOTIATED SERVICES.

(a) Application. Negotiated Services shall be used when other methods of procurement are not practical or possible and it is in the best interest of the DOE to procure services under the circumstances specified herein. The award of a contract shall be based upon a combination of cost, quality and efficiency.

(b) Circumstances for Use. Negotiated Services may be utilized under any of the following circumstances:

(1) there is a compelling need to extend a contract one or more times beyond the permissible cumulative twelve-month limit, provided that the vendor's performance is satisfactory or that any deficiencies have been or are addressed or are effectively addressed through a corrective action plan and the extension(s) is for the minimum time necessary to meet the need; or

(2) the DOE's requirements are such that only one vendor can satisfactorily meet the requirements, and it is not practical to alter such requirements to enable competition; or

(3) a time sensitive situation where a vendor must be retained quickly for one of the following reasons:

(i) funds from a source outside the DOE could be lost;

(ii) an existing supplier has been terminated, defaulted, or has become otherwise unavailable; or

(iii) a compelling need for a specific vendor's services that cannot be met through competitive sealed proposals.

(4) the vendor submitted a proposal to provide services where a portion of the services are funded through another source and it is cost effective and beneficial to the DOE to award a contract to such vendor; or

(5) such other circumstances determined to be in the best interest of the DOE.

(c) Determination. A determination shall be made that Negotiated Services is in the best interest of the DOE and that it is not practical or possible to use a competitive method of procurement. Such determination shall include the following elements:

(1) a detailed cost breakdown of the services;

(2) a statement describing the applicable circumstance in subsection (b) above and how it is applicable to this procurement;

(3) an explanation of why the proposed vendor was selected; and

(4) pertinent information concerning other vendors who have been contacted (i.e., why they cannot provide the service, pricing offered, etc.), as applicable.

(d) Chancellor's Committee on Contracts. The Chancellor shall convene a Committee on Contracts (Committee) to review and provide recommendations on proposed Negotiated Services. All Negotiated Services greater than $100,000 shall be submitted to the Committee after a notice of intent to procure has been published in accordance with subsection (e) below and any responses have been evaluated. Such Committee shall be composed of representatives of DOE's Division of Contracts and Purchasing, Office of Legal Services, Office of the Auditor General and other offices.

(e) Public Notice.

(1) Notice of Intent to Procure. This subparagraph shall apply to Negotiated Services greater than $25,000.

(i) Frequency. Notice of intent to procure shall be published once in the City Record seven days prior to the Chancellor's Committee on Contracts meeting where such item is on the agenda. The notice shall be posted simultaneously on the DOE's website in a location that is accessible by the public. Such notice shall solicit expressions of interest from vendors qualified to compete on this procurement or in the future. This subsection shall

not apply in cases where the Corporation Counsel or his/her designee has provided a written statement that such notice may jeopardize pending litigation.

(A) Exception. The Chancellor's Committee on Contracts may deem it necessary to review and recommend the award of a contract prior to the publication of the notice of intent to procure. If a respons(es) is received to the notice of intent to procure, the Committee's recommendation of award of a contract shall be stayed and the contract shall be resubmitted to the Committee.

(ii) Content. Such notice shall include:

(A) title and/or brief description of the services procured;

(B) name of the proposed vendor;

(C) summary of the determination;

(D) how qualified vendors may obtain an application, or express their interest in providing such services; and

(E) due date.

(2) Notice of Award.

(i) Frequency. Notice of a contract award greater than $25,000 shall be posted once on DOE's website in a location that is accessible by the public within thirty calendar days after registration of the contract.

(ii) Content. Such notice shall include:

(A) purchase description;

(B) name of the vendor;

(C) dollar value of the contract;

(D) method of source selection; and

(E) contract term.

(f) Approval. Approval of proposed Negotiated Services shall be as follows:

(1) $25,000 or less - Principal or Head of Office

(2) Greater than $25,000 to $100,000 – Executive Director

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(3) Greater than $100,000 – Chancellor or his/her designee.

Such approval shall not be otherwise delegated.

## Section 3-09 EMERGENCY PURCHASES.

(a) Definition of Emergency Conditions. An emergency condition is an unforeseen danger to life, safety, property, or a necessary service. The existence of such a condition creates a need for goods, services or construction that cannot be met through normal procurement methods.

(b) Scope. An emergency procurement shall be limited to the procurement of those items necessary to avoid or mitigate danger to life, safety, property, or a necessary service.

(c) Authority to Make Emergency Purchases. The DOE may make an emergency procurement when an emergency arises and the Department's resulting need cannot be met through normal procurement methods. The Chancellor shall approve emergency purchases.

(d) Source Selection. The procedure used shall assure that the required items are procured in time to meet the emergency. Given this constraint, such competition as is possible and practicable shall be obtained.

(e) Public Notice and Filing Requirements. Solicitations in emergency procurements are subject to the following public notice and reporting requirements:

(1) Solicitations pursuant to a finding of emergency are not required to be published in the City Record.

(2) A written determination of the basis for the emergency shall be filed with the Comptroller when such emergency contract is filed with the Comptroller.

(3) Notice of Award. Notice of a contract award greater than $25,000 shall be posted once on DOE's website in a location that is accessible by the public within thirty calendar days after contract registration.

(i) Content. Such notice shall include:

(A) summary determination of the basis for the emergency stated to be an unforeseen danger to life, safety, property, or a necessary service;

(B) title and/or brief description of the goods, services or construction procured;

(C) name of the vendor;

(D) dollar value of the contract; and

(E) process by which the contract was let.

## Section 3-10 SIMPLIFIED PROCUREMENT.

(a) Application. Simplified procurement is a method of competitive procurement for purchases within the thresholds specified herein. A procurement shall not be artificially divided in order to meet the requirements of this section. Changes to, extensions of and/or renewals of simplified procurements shall not bring the total value of the procurement to an amount greater than the simplified procurement limits stated herein. Public notice of solicitation and award, vendor protests, and written notice to the low bidder or offeror of non-responsiveness shall not be required for simplified procurement purchases awarded pursuant to this section. The VENDEX questionnaire must be filed by the vendor when the aggregate value of purchases, franchises, and concessions awarded to that vendor including this one during the immediately preceding twelve-month period equals or exceeds $100,000.

(b) Process.

(1) Goods.

(i) Micro Purchase. Micro purchases for goods are purchases of $250 or less. No competition is required for micro purchases.

(ii) Simplified Procurement Purchase. In accordance with New York State Education Law Section 2556 10-a, a simplified procurement process for goods may be utilized for purchases greater than $250 to not greater than $15,000. For simplified procurement of goods, at least three vendors shall be solicited.

(A) For simplified procurements of goods greater than $5,000, responsive bids shall be obtained from at least two vendors. If only one responsive bid is received in response to a solicitation, an award may be made to that vendor if the Procurement Manager determines that the price submitted is fair and reasonable and that other vendors had reasonable opportunity to respond.

(iii) Solicitation. The following solicitation methods for simplified procurement of goods shall be used:

(A) for simplified procurement of goods $5,000 or less, an oral or written solicitation describing the requirements; or

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(B) for simplified procurement of goods greater than $5,000, a written solicitation describing the requirements. Where available, the Procurement Manager may obtain price quotes from sources on the internet provided that the vendors submit written quotes to the Procurement Manager.

(2) Services and Construction.

(i) Micro Purchase. Micro purchases for services and construction are purchases of $5,000 or less. No competition is required for micro purchases.

(ii) Simplified Procurement Purchase. Simplified procurement of services and construction are purchases greater than $5,000 to not greater than $100,000. For simplified procurement of services and construction, at least three vendors shall be solicited.

(A) Responsive bids or offers shall be obtained from at least two vendors. If only one responsive bid or offer is received in response to a solicitation, an award may be made to that vendor if the Procurement Manager determines that the price submitted is fair and reasonable and that other vendors had reasonable opportunity to respond.

(iii) Solicitation. For simplified procurement of services and construction, a written solicitation describing the requirements is required. Where available, the Procurement Manager may obtain price quotes from sources on the internet provided that the vendors submit written quotes to the Procurement Manager

(3) The solicitation for a simplified procurement of goods, services and construction shall contain, at a minimum:

(i) a description of the goods, services or construction requested;

(ii) time, date, place, and form of requested response;

(iii) basis for award; and

(iv) contact information of the Procurement Manager to whom inquiries may be directed.

(c) Award. Simplified procurements shall be awarded to the lowest responsive and responsible bidder or to the responsive and responsible offeror that has made the most advantageous offer. After such determination has been made, the Procurement Manager shall issue a purchase order or contract, as appropriate, to the successful bidder or offeror.

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(d) Record. The procurement file for a simplified procurement shall include, at a minimum:

(1) name of the responsible Procurement Manager;

(2) date of contract award;

(3) purchase order or contract number;

(4) name of successful vendor;

(5) invoice and receiving documentation;

(6) description of goods, services or construction;

(7) names of solicited vendors;

(8) where applicable, copy of written or e-mail solicitation;

(9) bids and offers;

(10) relevant correspondence;

(11) an explanation of the advantages of accepting a higher priced offer over a lower priced offer(s), where applicable; and

(12) justifications required in Sections 2-10 and 3-01 of these Procedures.

(e) DOE Approvals.

(1) Simplified procurements of goods shall be approved by the Principal or Head of Office.

(2) Simplified procurements of services and construction shall be approved as follows:

(i) $25,000 or less – Principal or Head of Office;

(ii) greater than $25,000 to not greater than $100,000 – the Chief Administrator.

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## Section 3-11 PURCHASES THROUGH GOVERNMENTAL CONTRACTS.

(a) Policy. The DOE may purchase goods, services and construction through contracts of the United States General Services Administration or any other federal agency, the New York State Office of General Services or any other State agency and the City of New York and its agencies provided that the price is lower than the prevailing market price. Additionally, DOE may make purchases through contracts of other states within the United States that were competitively solicited with the express authorization of such state and with the approval of the New York State Office of General Services if the price is lower than the prevailing market price. If an item is purchased by the DOE hereunder, solicitation is not required except as specifically required by such contract.

(b) Approval. The Executive Director shall approve purchases through governmental contracts greater than $100,000 that are let by states other than New York.

(c) Responsibility Determination. Prior to making a purchase through a governmental contract, the DOE shall make an affirmative finding of responsibility and may require from the vendor the submission of a VENDEX questionnaire.

(d) Public Notice of Award.

(1) Frequency. Notice of Award of a contract greater than $25,000 shall be posted once on the DOE's website in a location that is accessible by the public within thirty days after registration of the contract or placement of the purchase order.

(2) Content. Such notice shall include:

(i) title and/or brief description of the goods, services or construction procured;

(ii) name of the vendor;

(iii) dollar value of the contract; and

(iv) how a vendor may express interest in such type of procurement in the future.

(e) Record. Records shall include at a minimum:

(1) the determination that the price is lower than the prevailing market price including an explanation of how such determination was made;

(2) the Executive Director's approval, if applicable;

(3) the list of goods, services, or construction procured;

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(4) the name and address of the vendor;

(5) the date and the amount of the purchase order or contract;

(6) a copy of the purchase order or contract.

## Section 3-12 DEMONSTRATION PROJECTS FOR INNOVATIVE PRODUCTS, APPROACHES, OR TECHNOLOGIES.

(a) Policy and Purpose. It is in the DOE's best interest to consider proposals for demonstration projects. A demonstration project is a short-term, carefully planned, pilot exercise designed to test and evaluate the feasibility and application of an innovative product, approach, or technology not currently used by the DOE. Demonstration projects may be proposed for goods, services or construction. They allow the DOE to observe and analyze effectiveness and efficiency without a large commitment of resources. Demonstration projects may be initiated by an unsolicited proposal or by the DOE on its own initiative.

(b) Preliminary Discussions. The DOE may engage in preliminary discussions with a vendor to explore the feasibility of a proposed demonstration project. Discussions are not negotiations for the award of a contract. A summary of these discussions shall be documented and retained in the contract file.

(c) Determination. Prior to entering into negotiations for the award of a contract for a demonstration project, the Executive Director shall make a determination stating that:

(1) testing or experimentation is advisable to evaluate the service or reliability of the product, approach, or technology;

(2) the product, approach, or technology cannot be reasonably acquired for evaluation through a competitive solicitation or there are other potential advantages to the DOE for using this method of source selection;

(3) the product, approach, or technology is not currently in use in the DOE;

(4) the results of the demonstration project shall be documented and made publicly available on the DOE's website upon its conclusion;

(5) there is an intent to competitively acquire the product, approach, or technology if, after testing and evaluation, a decision is reached to continue its use within the DOE; and

(6) any outside funding relied upon to justify the award of the contract pursuant to this section has been documented.

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(d) Contract Term. Contracts for demonstration projects should be for a term that is reasonable both to conduct the demonstration and to determine its effectiveness and shall not exceed three years. In order to enter into a multi-term contract, the Executive Director shall make a determination setting forth with specificity:

(1) why the effectiveness of the product, approach, or technology cannot be evaluated within one year, and

(2) how the proposed term of the contract was determined. In making such determination, the Executive Director may consider whether it would be in the DOE's best interest to ensure that no break in the provision of services occurs at the end of the demonstration project, if successful. If the Executive Director makes such a determination, the Executive Director should establish an initial term that, although no longer than three years, is long enough to allow for the subsequent solicitation of those services at the conclusion of the project's evaluation. In the event that a longer period is needed, to allow for continuity of services and/or to evaluate the demonstration, the DOE may extend the contract for an additional period of up to one year pursuant to Section 4-07 of these Procedures.

(e) Notice of Intent. Notice of intent to enter negotiations for a demonstration project greater than $25,000 shall be published for at least five days in the City Record at least seven days before entering into negotiations with the vendor and shall be posted simultaneously on the DOE's website in a location that is accessible by the public. The public notice shall remain on the DOE's website until responses are due.

(1) Content. Such notice shall include:

(i) title and/or brief description of the goods, services, or construction to be procured;

(ii) name of the proposed vendor;

(iii) summary of the determination;

(iv) how vendors may express their interest in providing such good or service; and

(v) due date for expressions of interest.

(f) Evaluation. Upon the evaluation of expressions of interest received, if any, the Executive Director shall make a determination of how to proceed, which includes the basis for such determination. Where it appears that the product, approach, or technology is already competitively available in the marketplace, the Executive Director may determine that a competitive solicitation may be issued; or, if it appears that the product, approach, or technology can be reasonably evaluated using short-term contracts with more than one vendor, the Executive Director may determine that

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negotiations to establish such demonstration projects may be conducted with more than one vendor, or negotiations may proceed with the single vendor originally identified.

(g) Approval. Approval of demonstration projects shall be as follows:

(1) $25,000 or less - Principal or Head of Office

(2) Greater than $25,000 to $100,000 – Executive Director

(3) Greater than $100,000 – Chancellor or his/her designee shall approve demonstration projects upon a recommendation from the Chancellor's Committee on Contracts in accordance with Section 3-08(d) of these Procedures.

Such approval shall not be otherwise delegated.

(h) Negotiations. After completing negotiations, the Executive Director shall award the contract if it is determined that the award will be in the DOE's best interest and that the price is fair and reasonable.

(i) Notice of Award.

(1) Frequency. Award of contracts greater than $25,000 shall be published once on DOE's website in a location that is accessible by the public within thirty calendar days after registration of the contract.

(2) Content. Such notice shall include:

(i) title and/or brief description of the goods, services or construction procured;

(ii) name of the vendor;

(iii) dollar value of the contract;

(iv) the date of the published notice of intent to enter into negotiations for the award of a contract for a demonstration project; and

(v) summary determination of the basis for the demonstration project and availability of the full evaluation.

(j) Conclusion of Demonstration Project. At the conclusion of the contract term, based upon the documented results of the project, the DOE shall make a determination, including the reasons therefor, whether to competitively acquire or to discontinue the use of the product, approach, or technology.

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## Section 3-13 INNOVATIVE PROCUREMENT METHODS.

(a) Purpose. Innovative procurement methods test and evaluate the feasibility and application of procurement methods not currently used by the DOE or provided for under these Procedures.

(b) Prerequisites for Using Innovative Procurement Methods.

(1) Circumstances of Use. An innovative procurement method may be used to procure goods, services or construction in circumstances where such method would serve the DOE's interest better than those methods currently available under these Procedures.

(2) Approval. Innovative procurement methods require the approval of the Chancellor upon a recommendation from the Chancellor's Committee on Contracts in accordance with Section 3-08 (d) of these Procedures.

(3) Determinations. Executive Director shall make a determination to use an innovative procurement method which shall include the following:

(i) the nature and requirements of the procurement method being proposed;

(ii) the reason(s) why the use of the such method would serve the DOE's interest better than the methods currently available under these Procedures;

(iii) the time within which this method will be implemented;

(iv) a description of the goods, services or construction to be procured using this method; and

(v) the approximate dollar value of the contract.

(4) Notice of Opportunity to Comment on Proposed Method and/or Submit Expression of Interest. The public shall have seven days to submit written comment on a proposed innovative procurement method and/or submit expressions of interest for a contract to be let pursuant to this section.

(i) Frequency. Notice of such opportunity shall be published in not less than five consecutive editions of the City Record and shall be posted simultaneously on the DOE's website in a location that is accessible by the public. The due date for receipt of comments and submission of expressions of interest shall be not less than seven days after the final notice in the City Record.

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(ii) Content. Such notice shall include:

(A) a description of the goods, services or construction to be procured using this method, and the approximate dollar value of the procurement;

(B) the reason(s) why the use of such method would serve the DOE's interest better than the methods currently available under these Procedures;

(C) the nature and requirements of the procurement method to be used, including, but not limited, to how vendors may express interest in providing the desired goods, services or construction to be procured; the time within which this method will be implemented; how expressions of interests are to be evaluated, and the due date for receipt of comments and/or expressions of interest; and

(D) notice that the proposed innovative procurement method will be evaluated to determine whether it is in the DOE's interest to codify the method used within these Procedures.

(c) Notice of Award.

(1) Frequency. Notice of an award made pursuant to this section shall be posted once on the DOE's website in a location that is accessible by the public within thirty days after registration of the contract.

(2) Content. Such notice shall include:

(i) title and/or brief description of the goods, services or construction procured;

(ii) estimated quantity, if any;

(iii) name of the vendor; and

(iv) dollar value of the contract.

(d) Revision to Procedures. If it is determined that the innovative procurement method should be utilized subsequently, the DOE shall submit a revision to these Procedures to the Panel for Educational Policy to codify such method. If the Panel does not approve the revised procedures, then the method shall not be used for any further solicitations until such time, if any, as the Panel does approve such method.

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## Section 3-14 GOVERNMENT-TO-GOVERNMENT PURCHASES.

(a) Policy. Government-to-government purchases may be made pursuant to this section when it is in the DOE's best interest to procure from another governmental entity goods, services and construction. In such cases, the accepted price, terms, and conditions shall be achieved through negotiation between the DOE and the governmental entity. Except for the requirements set forth in this section, and as otherwise required by law, these Procedures shall not apply to these procurements.

(b) Preliminary Discussions. The DOE may engage in preliminary discussions with a governmental entity to explore the feasibility of a government-to-government purchase. Discussions are not negotiations for the selection of a vendor.

(c) Determination. Prior to entering into a government-to-government purchase, the Executive Director shall make a determination citing the reasons why a government-to-government purchase is in the best interest of the DOE. The Executive Director shall further determine that the price is fair and reasonable, taking into consideration the circumstances that otherwise make it in the DOE's best interest to enter into such purchase.

(d) Public Notice.

(1) Notice of Intent. Notice of intent to enter into a government-to-government purchase greater than $25,000 shall be published once in the City Record and shall be posted on the DOE's website in a location that is accessible by the public simultaneously with its publication. The public notice shall remain on the DOE's website until expressions of interest are due. The last date of publication of such notice shall appear no fewer than seven days before negotiations are expected to begin.

(2) Content. Such notice shall include:

(i) title and/or brief description of the goods, services, or construction;

(ii) estimated quantity, if any;

(iii) name of the governmental entity;

(iv) how qualified vendors may express their interest in providing such goods, services, or construction in the future;

(v) due date for expressions of interest; and

(vi) a summary of the basis for the determination to use this procurement method.

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(e) Notice of Award.

(1) Frequency. Notice of award of contracts greater than $25,000 shall be posted once on the DOE's website in a location that is accessible by the public within thirty days after the contract is registered by the Comptroller.

(2) Content. Such notice shall include:

(i) title and/or brief description of the goods, services, or construction;

(ii) name of the governmental entity;

(iii) dollar value of the contract; and

(iv) the date of the published notice of intent to enter into a government-to-government purchase.

## Section 3-15 CONSULTANT CONTRACTS WITH INDIVIDUALS.

(a) Application. This section establishes special procurement requirements for the use of individuals as consultants as provided for in Chancellor's Regulation C-190, which sets forth policy and procedures for engaging consultants. Individuals as consultants are distinguished from a group, corporate body, institution or individual who is incorporated, the services of which must be procured pursuant to one of the other source selection methods in Chapter 3 of these Procedures. All other provisions of these Procedures shall apply to the procurement of the services of individuals as consultants.

(b) Types of Services Permitted. Chancellor's Regulation C-190 permits the use of individuals as consultants for types of services which include but are not limited to:

(1) Education Consultants have specific expertise in areas such as program development and implementation, staff development and training, diagnosis of learning disabilities, pupil assessment, development of guidelines and manuals on school personnel administration.

(2) Evaluation Consultants have demonstrable professional and technical skills necessary to assess the success of a program. These skills include research and development, testing, and the collection, processing, preparation and dissemination of reports. The nature and applicability of the consultant's skills should be determined based on the specific tasks necessary to complete the evaluation.

(3) Arbitrators and Expert Witnesses are engaged to render determinations or to furnish authoritative testimony at hearings on matters

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of employee performance and labor relations. In some cases, the cost of their services is shared, by agreement, with an employee or union.

(4) Artistic Consultants function as performing artists or they assist in specialized aspects of a program related to the arts. They offer unusual talents in the areas in which they provide service.

(5) Legal and Medical Consultants are specialists with expert competencies in their fields of work. They can be employed on an ad hoc basis for the duration of a particular case or for use by an office dealing with this need for a longer period of time.

(c) Determination. Prior to engaging the services of an individual as a consultant, the Procurement Manager shall make a written determination containing the following:

(1) explanation of the circumstances for utilizing a consultant pursuant to Section 2-10 of these Procedures;

(2) justification for utilizing a source selection method other than competitive sealed bidding pursuant to Section 3-01 of these Procedures; and

(3) verification that the consultant is an individual and therefore procurement of such consultant's services is subject to the requirements of this section.

(d) Procedures.

(1) Consultant services $25,000 or less are exempt from the source selection requirements of these Procedures. In addition to the determination requirements in section (c) above, the Procurement Manager must also document how and why the consultant was identified for the project.

(2) Consultant services greater than $25,000 and less than $50,000 shall be procured in accordance with the simplified procurement process in Section 3-10(a)(2) and (3) of these Procedures.

(3) Consultant services $50,000 or greater shall be procured in accordance with the request for proposals process in Section 3-03, the expedited competitive solicitation process in Section 3-05 or the Negotiated Services process in Section 3-08 of these Procedures.

(4) A Request for Authorization shall be prepared and approved for procurements under subparagraph (3) above pursuant to Section 2-07 of these Procedures.

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(5) The Chancellor shall approve any exceptions to the procedures in this subparagraph (d).

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# CHAPTER 4
# CONTRACT ADMINISTRATION

## Section 4-01 CONTRACT INFORMATION.

(a) Agency Contract Files. The DOE shall maintain files that contain all documentation pertaining to the solicitation, award, and management of each of its contracts, purchase orders, contract changes, extensions and renewals including, but not limited to, a written copy of each report, record, justification, approval, determination, or filing that is required to be made by law or these Procedures.

(b) Electronic Documents and Signatures. To the extent permissible under applicable law and these Procedures, the DOE may store the contents of contract files electronically, and may use and may allow vendors to use, electronic documents and signatures in the course of procurements. Any system used for storage of procurement-related documents in electronic form must be such as to provide for the security and integrity of the documents contained in it to an equal or greater degree than a traditional hard copy filing system.

(c) Retention of Contract Files. The DOE shall retain all contract files for a minimum of six years beyond the expiration or termination date of the contract, final payment under the contract, or completion of litigation, whichever is later. See Appendix 3 for additional record retention requirements.

## Section 4-02 CONTRACT ADMINISTRATION RESPONSIBILITIES.

(a) Contract Manager. Each contract and purchase order, including orders against DOE contracts, awarded by the DOE shall have a Contract Manager who shall perform contract administration functions. The Contract Manager is designated by the Head of the Office that requested the contract, however, some or all of these functions may be performed by an individual who is not an employee of the office that requested the contract. Contract administration functions may also be performed by authorized representatives of the Contract Manager or Head of Office acting within the limits of their authority.

(b) Contract Administration Functions. The contract administration functions to be performed by the Contract Manager include but are not limited to:

(1) approving and monitoring contractor payments and performing the functions of the Receiving Officer in Section 4-04 below;

(2) performing quality assurance, inspection and testing functions;

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(3) monitoring and enforcing the contractor's compliance with DOE security requirements in schools, including fingerprinting requirements, where applicable;

(4) monitoring and evaluating contractor performance;

(5) assessing the need for contract changes, extensions and renewals;

(6) participating in dispute resolution activities; and

(7) maintaining a file containing records, correspondence and determinations pertaining to contract administration.

## Section 4-03 QUALITY ASSURANCE, INSPECTION, AND TESTING.

The DOE shall take such steps as are deemed desirable to ascertain or verify that goods, services or construction procured conform to specifications. In furtherance of this objective, the program office may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed.

## Section 4-04 VENDOR PAYMENT.

(a) Policy. It is the policy of the DOE to process payments to vendors efficiently and expeditiously so as to assure payment in a timely manner to vendors that do business with the DOE.

(b) Definitions. In this section, the following terms have the meanings indicated.

Invoice. A written request for a payment that is submitted by a vendor in good faith setting forth the description, price, and quantity of goods, services or construction delivered or rendered, in such form and supported by such documentation as required by the DOE, and any other documents required by the contract/purchase order.

Payment Officer. Any individual duly authorized to receive payment documentation and prepare a voucher to generate delivery of a check or electronic payment to the vendor.

Receiving Officer. Any individual duly authorized to receive goods or oversee the provision of services or construction and certify that such goods, services and construction conformed to contract/purchase order specifications.

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(c) Process.

(1) Invoice Receipt. The payment process is initiated upon the DOE's receipt of an invoice at the location specified in the contract or purchase order for the goods, services or construction provided. The contract or purchase order may require the vendor to provide additional documentation in support of services or construction provided, such as progress reports or attendance sheets. The payment process shall not be initiated until all required supporting documentation has been received by the DOE. The responsibility to provide additional documentation rests solely with the vendor.

(2) Certification. The Receiving Officer shall provide certification of receipt of the goods, services or construction. Where the goods, services or construction provided did not conform to the specifications, the goods received were damaged, or the goods, services or construction were otherwise not accepted by the Receiving Officer, the Receiving Officer shall notify the vendor immediately to rectify the problem and shall determine if any reduction in payment is appropriate. If payment has already been issued, the DOE may seek a refund from the vendor in whole or in part.

(3) Document Review and Payment. The Payment Officer shall match the invoice, applicable supporting documentation and applicable receiving documentation with the contract/purchase order and review all documents to assure conformity to the terms of the contract/purchase order. Where there is a discrepancy in the documentation, the Payment Officer shall notify the vendor and/or the Receiving Officer to rectify the problem. When the documentation is in proper order, the Payment Officer shall issue a voucher to generate delivery of a check or electronic payment to the vendor.

(d) Timely Payment. Wherever possible, the DOE shall issue a voucher for payment within thirty days of receipt of an invoice and all applicable supporting documentation or acceptance of goods/services/construction delivered, whichever is later. Factors that may prevent issuance of a voucher within thirty days include but are not limited to:

(1) the vendor delivered the goods or provided services/construction without a valid contract or purchase order;

(2) the invoice did not contain all of the information required by the DOE;

(3) the supporting documentation was not submitted, was incomplete or did not otherwise meet the requirements of the DOE or the contract/purchase order;

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(4) the invoice was not submitted to the location specified in the contract/purchase order; or

(5) additional time was required to verify that services or construction delivered met the requirements of the contract/purchase order.

(e) Early Payment Discounts and Other Payment Services.

(1) Early Payment Discounts. The DOE may include in contracts a provision for discounted payment amounts when the payment is issued within a specified time frame. When the payment is not issued within the specified time frame, the discount will be waived.

(2) Electronic Commerce Payment Services. The DOE may offer vendors additional services including but not limited to access to data on the vendor's contract(s)/purchase order(s), invoices and payments, the ability to submit invoices electronically and to receive expedited payment within a specified period of time in exchange for a fee. Where the payment is not issued within the specified time frame, the fee will be waived.

## Section 4-05 CONTRACTOR PERFORMANCE.

(a) Monitoring. The Contract Manager will assure that all material goods, supplies, services and construction purchased by the DOE meet standards for quality, function and utility consistent with specifications established for the items purchased. Contractor performance shall be monitored against such standards and indicators on an ongoing basis.

(b) Evaluations. Performance evaluation of contractors shall evaluate the degree to which the contractor's performance has conformed to the requirements of the contract, including, but not limited to quality and timeliness of performance and fiscal administration and accountability. Contractor performance shall be considered when determining whether an existing contract should be extended, renewed, terminated or allowed to lapse.

(c) Notification. Notification to the contractor of deficient performance shall be made as soon as practicable.

(d) Electronic Performance Evaluation Process. The DOE shall establish an electronic process for evaluating and documenting the performance of its vendors. Such process shall include the following requirements:

(1) reporting in a standard format with standard criteria and ratings;

(2) evaluations shall be done in accordance with a schedule established by the DOE;

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(3) notification to the vendor of deficient performance shall be made as soon as practicable, and shall not await the scheduled evaluation;

(4) evaluation reports must be sent to the vendor, with a statement that the vendor shall have fifteen days to respond in writing; that such response shall include a corrective action plan identifying with specificity the steps the vendor intends to take to remedy any deficiencies identified by the DOE; and that failure to respond within the specified time shall constitute the vendor's agreement with the contents of the report, but will not release the vendor from its obligations under this section; and

(5) evaluation reports (including vendor response, where applicable) shall be maintained in a centralized database for storage and retrieval.

(e) Contract Termination. Nothing in this section shall affect the DOE's right to terminate a contract for deficient performance or otherwise, in accordance with the terms of the contract.

## Section 4-06 RENEWAL OF CONTRACTS.

(a) Policy. Contracts may provide for the renewal of a contract with the same vendor with substantially unchanged terms and conditions, but possibly revised quantities, lists, schedules or items to be supplied, for a specified period of time. An executed contract shall not be changed to add a renewal clause.

## Section 4-07 CONTRACT EXTENSIONS.

(a) Policy.

(1) A contract may be extended for a cumulative period not to exceed one year from the date of expiration of the contract including any renewals or extensions explicitly provided for in such contract. Contract extensions pursuant to this section shall not be permitted until all renewals and extensions provided for in the original contract have been exhausted.

(2) The terms and conditions of an extension pursuant to this section must be the same or substantially equivalent to the terms and conditions of the original contract.

(3) Unless otherwise authorized by the Chancellor, pricing for the extension term must be at the same rates and/or fees as those in the original contract, including price escalations consistent with those that the original contract may have included. An extension of term under this provision may only be used to extend time for completion of services or construction or to purchase additional services during the extended term and shall not be used to increase costs for services already rendered.

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(4) Simplified procurements pursuant to Section 3-10 of these Procedures may be extended for such time that the total cost of the procurement plus the cost of the extension(s) does not exceed the simplified procurement thresholds.

(5) This Section shall apply to all types of contracts let by the Department except:

(i) emergency procurements; or

(ii) contracts procured by competitive sealed bidding if executed prior to September 15, 2008; or

(iii) contracts whose extension will be funded by tax levy funds where the original budget was funded by non-tax levy funds, e.g., grant funds.

(b) Procedures.

(1) Contract extensions for no additional cost and for a period not to exceed one hundred eighty days, and contract extensions for a cumulative total $25,000 or less shall be approved by the Principal or Head of Office.

(2) Contract extensions for no additional cost and for a period exceeding one hundred eighty days, and contract extensions for a cumulative total amount greater than $25,000 to not greater than $250,000 shall be approved by the Executive Director.

(3) Contract extensions for a cumulative total amount greater than $250,000 shall be approved by the Chancellor. Additionally, the recommendation of the Chancellor's Committee on Contracts pursuant to Section 3-08(d) of these Procedures is required prior to the Chancellor's approval for an extension for a cumulative total amount greater than $100,000 for any contract which was originally recommended for approval by the Chancellor's Committee on Contracts.

(4) For extensions in accordance with (2) and (3) above, the Contract Manager must notify the Executive Director of his/her intent to extend a contract and the reasons therefore. The Executive Director shall make a written determination setting forth the reasons why it is in the best interest of the DOE to extend the contract.

## Section 4-08 CONTRACT CHANGES.

(a) Policy. All changes to existing contracts shall be reflected in a contract amendment, which, once authorized pursuant to subsections (f) and (g) below shall

become a part of the original contract. The DOE may withhold payment from vendors who deviate from the requirements of a contract without a duly authorized amendment as set forth herein

(b) Types of Changes Permitted. Changes are permitted only for work necessary to complete the work included in the original scope of the contract and for non-material changes to the scope of the contract. Contract changes may include any one or more of the following:

(1) specification changes to account for design errors or omissions;

(2) changes in contract amount due to authorized additional or omitted work. Any such changes may require appropriate price and/or cost analysis to determine reasonableness;

(3) changes in delivery location;

(4) changes in shipment method; and

(5) any other change not inconsistent with this section.

(c) Changes Not Permissible for Material Alterations of Scope. Changes are not permitted for material alterations in the scope of the work. The scope of the solicitation may be considered in determining whether the change is material. Material alterations to the scope of work may be made only by a new procurement.

(d) Simplified Procurement. Changes to simplified procurement purchases shall not bring the total value of the procurement to an amount greater than the simplified procurement limits set forth in Section 3-10 of these Procedures.

(e) Adjustments of Price or Time for Performance. The vendor may be entitled to a price adjustment for extra work to be performed pursuant to a contract amendment. If any part of the contract work is necessarily delayed by a contract amendment, the vendor may be entitled to an extension of time for performance. Adjustments to price may be validated for reasonableness by using appropriate price and/or cost analysis.

(f) DOE Approvals. Contract changes shall be approved as follows:

(1) Principal or Head of Office. Changes for a cumulative total amount of $25,000 or less, except those changes in subparagraph (2)(ii) below.

(2) Executive Director.

(i) Changes for a cumulative total amount greater than $25,000 and not greater than $250,000; and

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(ii) Changes that alter the original contract's unit price(s) or price(s) for an item(s) or task(s), where the cumulative total amount of the change is $25,000 or less and where the original contract amount is greater than $100,000.

(3) Chancellor. Changes for a cumulative total amount exceeding $250,000. Additionally, contract changes for a cumulative total amount exceeding $100,000 where the contract was originally approved by the Chancellor's Committee on Contracts and where the contract change includes an extension of term must receive the recommendation of the Chancellor's Committee on Contracts pursuant to Section 3-08(d) of these Procedures.

(g) Panel for Educational Policy Approval. Any change to a contract involving an increase in cost of the greater of 10% of the original contract amount or $25,000 shall require Panel for Educational Policy approval.

(h) Documentation. For each procurement, the Procurement Manager shall maintain a log of all executed contract amendments that shall include the following information. For contract changes that are approved by the Head of Office or Principal, the documentation shall be created and maintained in the program office:

(1) the name of the vendor and the original contract amount;

(2) the reason(s) for and the dollar amount of the contract amendment; and

(3) a running total of the value of the changes and the resulting revised contract amount.

## Section 4-09 BUY-AGAINST PROCEDURES.

(a) Policy. When a vendor fails to perform or defaults on an existing contract for goods, services or construction, and there is a continued need for the goods, services or construction, the DOE may obtain the required goods, services or construction, as specified in the original contract, or any part thereof, from a successor vendor, pursuant to this section. In soliciting for the successor vendor, the Executive Director shall obtain competition to the maximum extent practicable under the circumstances. Prior to the solicitation, the Executive Director shall make a determination, including the basis thereof, that the method of source selection is in the best interest of the DOE. The method of source selection may include, but is not limited to, award to either the second lowest responsive and responsible bidder or next most advantageous proposer on the original solicitation at a price agreed upon between the bidder or proposer and the DOE. The term of a buy-against contract shall not exceed the balance of the term remaining on the original contract, or such interval necessary to complete the original contract work as agreed upon by the Executive Director and the vendor, whichever is longer. In addition, the Executive Director shall, unless there are

compelling mitigating circumstances, charge the non-performing vendor for any difference in price resulting from the buy-against contract, together with any administrative charge established by the DOE, and shall, as appropriate, invoke such other sanctions as are available.

(b) Notice of Vendor Selection.

(1) Frequency. Notice of award of buy-against contracts shall be published once in the City Record and posted once on DOE's website within thirty days after registration of the contract.

(2) Content. Such notice shall include:

(i) title and/or brief description of the goods, services or construction procured;

(ii) name of the successor vendor and of the original vendor;

(iii) dollar value of the replacement contract; and

(iv) summary determination of the basis for the buy-against procurement.

## Section 4-10 RESOLUTION OF DISPUTES ARISING OUT OF CONTRACT ADMINISTRATION.

(a) Application. In the event a contractor and the DOE are unable to resolve their differences concerning a determination by the DOE, the contractor may initiate a dispute in accordance with the procedure set forth in this Section. Exhaustion of these dispute resolution procedures shall be a precondition to any lawsuit permitted hereunder.

(b) Dispute Resolution Officer. The Dispute Resolution Officer (DRO) selected by the Executive Director shall be authorized to decide all questions of any nature whatsoever arising out of, under or in connection with, or in any way related to or on account of, the contract with the contractor (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to contract award) and the DRO's decision shall be conclusive, final and binding on the parties. The DRO's decision may be based on such assistance as he or she may find desirable, including the advice of experts. The effect of the DRO's decision shall not be impaired or waived by any negotiations or settlement offers in connection therewith, or by any prior decision of others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of the contract.

(c) Dispute Resolution Officer's Determination. All such disputes shall be submitted in writing by the contractor to the DRO, together with all evidence and other pertinent information with regard to such questions, in order that a fair and impartial

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decision may be made. The DOE Contract Manager may submit to the DRO all materials that s/he deems pertinent to the dispute. The DRO shall render a decision in writing and deliver a copy of same to the parties within forty-five days of the conclusion of submission of all materials and information or such longer time as may be agreed to by the parties. In an unusually complex case, the DRO may render his or her decision in a longer period of time, not to exceed ninety days or such longer time as may be agreed to by the parties, and shall so advise the parties at the commencement of this period. The DRO'S decision shall be deemed a final agency action.

(d) Status of Contract During Dispute Resolution Process. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the terms of the contract shall remain in full force and effect and the contractor shall continue to provide services in accordance with the contract. Failure of the contractor to continue to provide services shall constitute a material breach of contract.

(e) Contractor Protest of Determination. If the contractor protests the determination of the DRO, the contractor may commence a lawsuit in Supreme Court, New York County under Article 78 of the New York Civil Practice Law and Rules. Such review by the Court shall be limited to the question of whether or not the DRO'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 an action or proceeding that has not been presented to the DRO prior to the making of his or her decision.

## Section 4-11 ANNUAL REPORT ON PARTICIPATION OF MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES.

(a) Policy. The DOE shall issue an annual report on the participation of minority- and women-owned business enterprises in the DOE's procurement process including:

(1) the number of contracts awarded to minority- and women-owned business enterprises;

(2) the percentage of contracts awarded to minority- and women-owned business enterprises of the total number of all DOE contracts;

(3) the aggregate value of all contracts awarded to minority- and women-owned business enterprises; and

(4) the percentage of the aggregate value of contracts awarded to minority- and women-owned business enterprises of the total aggregate value of all DOE contracts.

(b) Report Issuance. The report shall be issued by the Office of Equal Opportunity no later than ninety days following the official close of DOE's financial

books with the Comptroller for the fiscal year, which generally occurs no later than October 15, and shall reflect contracting activity during such fiscal year.

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# APPENDICES

## APPENDIX 1

### THRESHOLDS FOR THE PURCHASE OF COMMODITIES USING COMPETITIVE SEALED BIDDING AND SIMPLIFIED PROCUREMENT PROCEDURES

This chart is provided as an aid in the administration of the procurement process. It shall not alter in any way the content of these Procedures.

| | $1 to $250 | $250.01 to $5,000 | $5,000.01 to $15,000 | $15,000.01 to $100,000 | Over $100,000 |
|---|---|---|---|---|---|
| BIDS ARE NOT REQUIRED (§3-10(B)(1)(I)) | X | | | | |
| 3 BIDS MUST BE SOLICITED VIA TELEPHONE OR IN WRITING (INCLUDES FAX OR E-MAIL). (§3-10(B)(1)(II) AND (III)(A)) | | X | | | |
| 3 BIDS MUST BE SOLICITED IN WRITING (INCLUDES FAX OR E-MAIL). (§3-10(B)(1)(III)(B)) | | | X | | |
| ORAL BIDS RECEIVED MUST BE DOCUMENTED | | X | | | |
| MUST RECEIVE ACTUAL DETAILED RESPONSIVE BIDS FROM AT LEAST 2 VENDORS (§3-10(B)(1)(II)(A)) | | | X | | |
| EXECUTIVE SUMMARY REQUIRED FOR ANY BID WITH AN ANTICIPATED CONTRACT VALUE OF $25,000 OR MORE. (§2-01(B)) | | | | X | X |
| ADVERTISEMENT IN THE "CITY RECORD" FOR A MINIMUM OF 1 DAY IS REQUIRED (§3-02(F)(1)(II)) | | | | X | X |
| BIDS RECEIVED FROM VENDORS MUST BE SEALED AND THEN READ AT A SCHEDULED PUBLIC BID OPENING (§3-02(E) AND (L)(2)) | | | | X | X |
| PUBLIC NOTIFICATION OF AWARD IS REQUIRED (§3-02(F)(2)) | | | | X | X |
| CHANCELLOR'S APPROVAL OF REQUEST FOR AUTHORIZATION REQUIRED FOR SINGLE BID (§2-07(C)(3)(I)) | | | | | X |
| CHANCELLOR'S APPROVAL OF REQUEST FOR AUTHORIZATION REQUIRED FOR ANY BID WITH A CONTRACT VALUE OF $1,000,000, OR MORE, WHERE THE LOWEST APPARENT BIDDER WAS NOT SELECTED DUE TO A FINDING OF NON-RESPONSIVENESS OR NON-RESPONSIBILITY (§2-07(C)(3)(II)) OR FOR ANY BID WITH A CONTRACT VALUE OF $5,000,000 (§2-07(C)(3)(III)) | | | | | X |

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# APPENDIX 2

## THRESHOLDS FOR THE PURCHASE OF PROFESSIONAL SERVICES USING REQUESTS FOR PROPOSALS AND SIMPLIFIED PROCUREMENT PROCEDURES

This chart is provided as an aid in the administration of the procurement process. It shall not alter in any way the content of these Procedures.

| | $1to $5,000 | $5,000.01 to $25,000 | $25,000.01 to $100,000 | Over $100,000 |
|---|---|---|---|---|
| PROPOSALS ARE NOT REQUIRED (§3-10(B)(2)(I)) | X | | | |
| 3 WRITTEN PROPOSALS MUST BE SOLICITED (INCLUDES FAX OR E-MAIL). (§3-10(B)(2)) | | X | X | |
| MUST RECEIVE ACTUAL DETAILED RESPONSIVE PROPOSALS FROM AT LEAST 2 VENDORS (§3-10(B)(2)(II)(A)) | | | X | |
| ADVERTISEMENT IN THE "CITY RECORD" FOR A MINIMUM OF 1 DAY IS REQUIRED (§3-03(E)(1)(II)) | | | | X |
| PROPOSALS RECEIVED FROM VENDORS MUST BE SEALED (§3-03(F)(2)) | | | | X |
| PUBLIC NOTIFICATION OF AWARD IS REQUIRED IF DOING RFP PURSUANT TO §3-03(E)(2) | | | X | X |
| REQUEST FOR PROPOSAL (RFP) MUST BE ISSUED (§3-03); CHANCELLOR'S APPROVAL OF EXECUTIVE SUMMARY REQUIRED FOR RFP'S GREATER THAN $1,000,000 (§2-01(C)(2)(II)) . | | | | X |
| CHANCELLOR'S APPROVAL OF REQUEST FOR AUTHORIZATION REQUIRED FOR RFP'S GREATER THAN $250,000 (§2-07(C)(3)(VIII)) | | | | X |

# APPENDIX 3

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## RECORDS RETENTION REQUIREMENTS

The following chart reflects a summary of the various documents and records and the retention period for each. New York State's complete record retention requirements can be found at http://www.archives.nysed.gov/a/records/mr_pub_ed1.pdf.

| Document | Retention Period |
|---|---|
| **Notice of encumbrance** indicating funds encumbered and amount remaining unencumbered: | 6 years |
| **Past due account fiscal records and summaries:** | 6 years after account satisfied or otherwise closed |
| **Intermediary fiscal record of receipts and disbursements**, including but not limited to detail record, analysis, proof sheet or trial balance worksheet, and adding machine tapes: | 6 years |
| **Abstract of receipts, disbursements, or claims:** | 6 years |
| **Tax exemption records,** showing that local government is exempt from paying sales, use or other taxes: | 1 year after superseded or obsolete |
| **Payment recoupment records,** documenting the process of recovering monies paid erroneously by local government to employee, vendor or other payee: | 6 years after date of most recent entry in record |
| **Receipt (received) or copy of receipt (issued)** other than for payment of taxes: | 6 years |
| Master summary record of grants, awards or gifts: | PERMANENT |
| Detailed records of grants, awards and gifts, excluding master summary record: | 6 years |
| Documentation for retention of consultants, including all records relating to the evaluation, solicitation, selection and payment of consultants. | 6 years after the last Fiscal Year transaction |
| **Credit card records** documenting payments received by credit cards, including credit card payment receipts, and statements showing amounts of payments received and fees deducted: | 6 years |
| **Purchase order, purchase requisition**, or similar record, used to obtain materials, supplies, or services: | 6 years |

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| | |
|---|---|
| **Purchasing file**, including but not limited to bid (successful, unsuccessful), contract and specifications, and related records, for purchase of materials, supplies and services **not** connected with capital construction: | 6 years after expiration or termination or 6 years after final payment under contract, whichever is later |
| **Vendor file**, including but not limited to list of vendors doing business with the local government, vendor evaluation forms, price lists or other information received from vendors: | 0 after obsolete |
| **Performance guarantee** or written warranty for products or similar record: | 6 years after expiration |
| **Invoice**, packing slip, shipping ticket, copy of bill of lading or similar record used to verify delivery and/or receipt of materials or supplies: | 6 years |
| **Invoice register**, or similar record used to list invoices: | 6 years after last entry |
| **List or abstract of purchase orders, claims or contracts**: | 6 years |
| **Standing order file**, used for purchase of materials and supplies which are received on a regular basis: | 6 years |
| **Chargeback records**, showing specific fund to be charged for in-house expenditure: | 6 years |
| **Canceled bids file,** including purchase requisitions, vendor solicitations, requests for proposals (RFPs), price quotations and related records concerning bids for goods, services or construction which were canceled without a purchase being completed: | 1 year after subsequent procurement of the same goods, services or construction completed under a re-initiated procurement, or 1 year after decision to not purchase such goods, services or construction |
| **Daily, weekly, monthly, quarterly, or other periodic fiscal reports**, including but not limited to daily funds report, daily cash report, statement of monthly balances, recapitulation of disbursements, and departmental reports: | 6 years |

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