

**NEW YORK CITY DEPARTMENT OF EDUCATION
TEMPORARY PROCUREMENT POLICY**

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INTRODUCTION

THIS TEMPORARY PROCUREMENT POLICY DATED SEPTEMBER 14, 2009, IS DRAWN FROM THE STANDARD OPERATING PROCEDURES MANUALS ENTITLED *OTHER THAN PERSONAL SERVICE (OTPS) PURCHASES AND UTILIZATION OF CONSULTANTS*.

SUBJECT TO SECTION 2590-g(9) OF THE NEW YORK STATE EDUCATION LAW, THIS TEMPORARY PROCUREMENT POLICY SHALL BE IN EFFECT UNTIL ADOPTION OF THE PERMANENT PROCUREMENT POLICY BY THE PANEL FOR EDUCATIONAL POLICY (“PANEL”).

1. STATEMENT OF PURPOSE

The underlying purposes of this Temporary Procurement Policy are to ensure the wise, prudent, and economical use of public money by the New York City Department of Education (NYCDOE) 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 NYCDOE; to provide for increased public confidence in the NYCDOE's public procurement procedures; to maximize to the fullest extent the purchasing power of the NYCDOE; to foster effective broad-based competition from all segments of the vendor community, including small businesses, minority and women-owned and operated enterprises; and to ensure appropriate public access to contracting information.

The NYCDOE's standard operating procedures manuals (“SOPM”) set forth the fiscal and business operating procedures for implementing purchases of goods or services, such as payment, followed by all schools and NYCDOE departments in accordance with this Temporary Procurement Policy. The SOPM can be found at: <http://schools.nyc.gov/default.htm>.

2. REGULATIONS

2.1 Authorizing Official.

To ensure that funds are spent responsibly, all purchase documents must be authorized by at least one NYCDOE official (“Authorizing Official”).

The Authorizing Official is responsible for ensuring that goods and services being ordered for a school or NYCDOE department are needed to conduct an educational or administrative program, and are procured in accordance with all NYCDOE rules and regulations. In general, all equipment, supplies, and services purchased with NYCDOE funds must serve the NYCDOE’s educational or administrative programs while complying with bidding, administrative and contractual requirements. In a school, the Authorizing Official is usually the principal or his/her designee. For a department, the Authorizing Official is usually the director or his/her designee.

2.2 Purchases from a Vendor under Contract with the NYCDOE.

If commodities or services are available from a vendor under contract with the NYCDOE, then the NYCDOE should order from that vendor. Additional bidding procedures need not be used. If an item can be obtained from a non-contracted vendor for less or other terms more economically beneficial than the price or terms in contracts established with the Division of Contracts and Purchasing (DCP), the Authorizing Official should contact DCP. DCP shall review the basis for the request, including how the non-contracted vendor was identified, and may exercise discretion in authorizing use of said non-contracted vendor if in the best interest of the NYCDOE.

2.3 Methods of Source Selection.

Unless otherwise authorized by law, all NYCDOE procurements shall be made by one of the methods set forth in this Temporary Procurement Policy.

2.4 Bidding Regulations.

Bidding procedures shall be observed for any purchase in excess of \$250. **Sections 3.2 and 3.4** set forth the solicitation thresholds for procurement of commodities and professional services.

2.5 Other Than Competitive Sealed Bidding.

Where the method of procurement is other than competitive sealed bidding or for awarding technical, consultant, or personal service contracts, franchises, revocable consents and concessions, the Executive Director of DCP (Executive Director, DCP) or Chief Administrator of DCP must state in writing the basis, including the efficiency, benefit and necessity, for awarding such contract.

2.6 Request for Authorization.

2.6.1 Policy. DCP shall prepare a Request for Authorization under the following circumstances:

- (1) procurements pursuant to a competitive sealed bid exceeding \$100,000, where there was only one bidder;
- (2) procurements pursuant to a competitive sealed bid exceeding \$1,000,000, where the lowest apparent bidder was not selected due to a finding of non-responsiveness or non-responsibility;
- (3) procurements pursuant to a competitive sealed bid exceeding \$5,000,000; and
- (4) all other procurements exceeding \$100,000 except for contracts awarded pursuant to a named grant (**Section 3.8.3**) or purchases through other governmental contracts (**Section 3.8.4**).

2.6.2 Content. The Request for Authorization shall contain, but not be limited to, the following information:

- (1) name of vendor and address;
- (2) description of services to be provided;
- (3) contract cost;
- (4) funding source;
- (5) projected start and end date;
- (6) renewal terms, if any;
- (7) procurement method;
- (8) contract type, i.e. full value or requirements;
- (9) name and contact information of contract manager/service requestor;
- (10) name and contact information of procurement analyst;
- (11) summary of responsibility determination;
- (12) basis for award; and
- (13) all applicable written determinations and written justifications required by this Temporary Procurement Policy.

2.6.3 Signatures. The Request for Authorization shall not be final until certified by the Chancellor or his designee.

2.7 Items Requiring Panel Approval.

The following contracts require Panel approval:

- (1) such contract was let by a procurement method other than competitive sealed bidding; or
- (2) such contract provides for technical, consultant or personal services; or
- (3) the value of such contract exceeds, or projects an annual expenditure exceeding one million dollars; or
- (4) the value of any contracts awarded to a single entity exceeds one million dollars annually; and
- (5) all franchises, revocable consents and concessions.

Panel approval shall not be required for any contract made directly by an individual school. Moreover, Panel approval shall not be required for any contract with the United States General Services Administration or any other federal agency or the New York State Office of General Services or any other State agency, if the price is lower than the prevailing market price. All purchases under \$25,000 made in accordance with the rules and procedures of the NYCDOE shall be deemed approved by the Panel.

2.8 VENDEX.

VENDEX is the computerized citywide system providing comprehensive contract management information. Vendors are required to complete the City of New York's (City) VENDEX questionnaires and submit them to the Mayor's Office of Contract Services, if they have contracts or subcontracts:

- (1) valued at \$100,000 or more; or
- (2) whose aggregate business with the NYCDOE in the preceding 12 months totals \$100,000 or more.

In addition, vendors are required to complete the VENDEX questionnaires if they have franchises or concessions valued at \$100,000 or more.

Vendors who have parent or other controlling entities will be required to submit Vendor Questionnaires for these entities. Principal Questionnaires for parent or controlling entities are not required.

The NYCDOE, in its sole discretion, may require that other entities/ principals complete VENDEX questionnaires.

The vendor and principal questionnaires are valid for three (3) years from the date of signature on the certification pages of the questionnaires. In the event that changes have occurred within the three year period, the contractor shall update any previously-submitted VENDEX questionnaire to supply any changed information by the time the submitting vendor enters into its next contract with a New York City agency and shall certify that both the updated and unchanged information is current, accurate and complete.

If there are no changes to any answers in the previously submitted vendor and/or principal questionnaire, the submitting vendor and/or principal must submit a certification of no change for the principals to the Mayor's Office of Contract Services.

A materially false statement willfully or fraudulently made in connection with any VENDEX questionnaire may result in a finding of non-responsibility. In addition, this may subject the individual making the false statement to criminal charges. Non-disclosure of relevant material may lead to a finding of non-responsibility or criminal charges against an individual/vendor.

2.9 Responsibility.

2.9.1 Standards. Purchases shall only be made from, and contracts shall be awarded to, responsible contractors. A contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors. 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 NYCDOE contract.

Factors affecting a contractor's responsibility may include:

- (1) financial resources;
- (2) technical qualifications;
- (3) experience;
- (4) 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;
- (5) a satisfactory record of performance;
- (6) a satisfactory record of business integrity;
- (7) 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; and
- (8) compliance with requirements for the use of small, minority-owned, and women-owned businesses as subcontractors, as applicable.

Failure of a firm to provide relevant information specifically requested by the NYCDOE

may be grounds for a determination of non-responsibility.

2.9.2 Procedures. The NYCDOE shall use the following sources of information to support determinations of responsibility or non-responsibility:

- (1) the VENDEX database of debarred, suspended, and ineligible contractors;
- (2) VENDEX and other records of evaluations of performance, as well as verifiable knowledge of contracting and audit personnel;
- (3) 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;
- (4) information supplied by the prospective contractor, including bid or proposal information, VENDEX and prequalification questionnaire replies, financial data, information on production equipment, and personnel information;
- (5) tax liens, judgments or warrants assessed against the prospective contractor;
- (6) other sources such as publications, suppliers, subcontractors and customers of the prospective contractor, financial institutions, other government agencies, and business and trade associations.

DCP will notify the prospective vendor of unfavorable responsibility information and provide the prospective vendor an opportunity to submit additional information or explain its actions before adverse action is taken by the NYCDOE.

2.10 Responsiveness.

2.10.1 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. The Chief Administrator of DCP shall make a determination of responsiveness prior to award.

2.10.2 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 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 unless otherwise accepted as set forth herein;
- (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, if any.

2.10.3 Determination of Non-Responsiveness. If the lowest price bid is found non-responsive, a determination, setting forth in detail and with specificity the reasons for such finding, shall be made by the Chief Administrator. A copy of such determination shall be mailed to the non-responsive vendor no later than two business days after the determination is made, and the NYCDOE shall inform the vendor of the opportunity to be heard.

2.11 Minority and Women-Owned Business Enterprises (MWBE).

The following measures shall be taken by the NYCDOE to enhance the ability of MWBE's to compete for NYCDOE contracts and to ensure their meaningful participation in the procurement process:

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

DCP in coordination with the Office of Equal Opportunity (OEO) shall create an annual report on the participation of MWBE's in the NYCDOE's procurement process including: (i) the number of contracts awarded to MWBE's, (ii) the percent of contracts awarded to MWBE's of the total number of all NYCDOE contracts, (iii) the aggregate value of all contracts awarded to MWBE's, and (iv) the percent of the aggregate value of contracts awarded to MWBE's to the total aggregate value of all NYCDOE contracts.

2.12 Filing of Contracts with the Comptroller of the City of New York.

Contracts, franchises, revocable consents and concessions shall be filed with the Comptroller of the City of New York (Comptroller). DCP shall forward contracts, franchises, revocable consents and concessions and any corresponding documentation as required by the New York State Education Law to the Comptroller for registration.

The Chancellor or his designee shall certify that the procedural requisites under the New York State Education Law have been met prior to filing with the Comptroller any contract awarded by a procurement method other than competitive sealed bidding, and technical, consultant, or personal services contracts, franchises, revocable consents or concessions.

2.13 Right to Waive.

Upon recommendation of the Chancellor, the Panel shall have the right to waive any, or all of the provisions of this Temporary Procurement Policy, consistent with law, upon a determination that such waiver is in the best interests of the NYCDOE.

3. PROCEDURES FOR OTHER THAN PERSONAL SERVICES

3.1 Overview.

The NYCDOE purchases instructional and non-instructional supplies and materials, textbooks, library books, equipment, school lunches, transportation, repairs, maintenance of equipment, professional services and hundreds of other goods and services necessary to running the school system. The budgetary term used to classify these services is called Other Than Personal Service (OTPS). The major considerations in OTPS expenditures are quality, cost, need and efficiency.

3.1.1 A non-recurring purchase does not require bidding if under \$250.

3.1.2 To purchase non-contracted items or services costing more than \$250, the purchaser must adhere to the solicitation thresholds in **Sections 3.2** and **3.4**.

3.1.3 Where competitive sealed bidding pursuant to **Section 3.3** is not practicable or not advantageous, the most competitive method should be used as determined by the Executive Director, DCP, or his designee.

3.1.4 It is impermissible to attempt to circumvent the purchasing thresholds by making multiple awards to the same vendor within the same fiscal year (also referred to as “split purchase orders”).

Thresholds for the Purchase of Commodities

	\$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	<u>X</u>				
3 BIDS MUST BE SOLICITED VIA TELEPHONE OR IN WRITING. SUBMISSION BY FAX OR THE INTERNET IS PERMITTED.		<u>X</u>			
3 BIDS MUST BE SOLICITED IN WRITING. SUBMISSION BY FAX OR THE INTERNET IS PERMITTED.			<u>X</u>		
BIDS RECEIVED MUST BE DOCUMENTED ON A "BID SUMMARY FORM"		<u>X</u>			
MUST RECEIVE ACTUAL DETAILED RESPONSIVE BIDS FROM AT LEAST 2 VENDORS			<u>X</u>		
OPEN MARKET AGREEMENT (ABBREVIATED FORM CONTRACT)				<u>X</u>	
EXECUTIVE SUMMARY REQUIRED FOR ANY BID WITH AN ANTICIPATED CONTRACT VALUE OF \$1,000,000 OR MORE. (An executive summary indicates the anticipated services, estimated cost, and why the procurement method is being used and must be approved by Chancellor or his designee.)					<u>X</u>
FORMAL CONTRACT (Insurance must be required)					<u>X</u>
ADVERTISEMENT IN THE "CITY RECORD" FOR A MINIMUM OF 7 DAYS IS REQUIRED				<u>X</u>	<u>X</u>
BIDS RECEIVED FROM VENDORS MUST BE SEALED AND THEN READ AT A SCHEDULED PUBLIC BID OPENING				<u>X</u>	<u>X</u>
REQUEST FOR AUTHORIZATION REQUIRED FOR SINGLE BID, TEXTBOOKS AND LISTING APPLICATIONS ONLY					<u>X</u>
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 OR FOR ANY BID WITH A CONTRACT VALUAE OF \$5,000,000					<u>X</u>

3.3 Competitive Sealed Bidding.

3.3.1 Application. Competitive Sealed Bidding (CSB) is the procurement method for contracts for public work, supplies, material and equipment in which sealed bids are publicly solicited and opened and a contract is awarded to the lowest responsive, responsible bidder. Specifications shall be made sufficiently detailed and exact to permit award of a contract, solely on the basis of price, to the lowest responsive, responsible bidder.

3.3.2 Content of Request for Bids. The bid solicitation document (Request for Bids or Open Market Agreement) must contain the following information:

- (1) 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; time, date, and location of any pre-bid conferences; and the address where bids are to be delivered;
- (2) the purchase description, delivery and performance schedule, and any special instructions necessary;
- (3) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable;
- (4) a statement that award shall be made to the lowest responsive and responsible bidder;
- (5) the NYCDOE's payment policies;
- (6) a provision concerning the submission and consideration of alternate bids, if applicable;
- (7) a notice that contract award is subject to provisions of all applicable laws;
- (8) where applicable, a notice that contract award is subject to completion of a VENDEX questionnaire; and
- (9) the NYCDOE contact information to whom questions and correspondence relating to the bid solicitation can be addressed.

3.3.3 Amendments. Amendments to bid solicitation documents are issued by DCP in writing in order to change, clarify or add terms, conditions or other requirements.

3.3.4 Notice of Solicitation. All bid solicitation documents requiring advertisement as set forth in **Section 3.2** are advertised in the City Record at least once and on NYCDOE's website. The notice shall include the following:

- (1) title and brief description of the goods or services required;
- (2) how, when, and where the bid solicitation document is available;
- (3) the time, date, and location of any pre-bid conference or site visit, if any;
- (4) the date, time, and location for the receipt and opening of bids; and
- (5) contact information.

3.3.5 Bidders List. The NYCDOE shall compile and maintain lists of vendors interested in being solicited for bids. Bidders lists shall be classified by standard categories of goods and services that are sufficiently detailed to provide meaningful distinctions among categories. Bidders lists shall include the names, addresses, EIN, and telephone numbers of the vendors. Application by vendors for placement on the NYCDOE's bidders lists shall be continuously available through the NYCDOE's website.

3.3.6 Presentation of Bid. Bidders shall furnish a bid in a sealed envelope to the NYCDOE representative at the place designated on or before the day and hour stated as set forth in the bid solicitation document. The front of the envelope must indicate the name of the person, firm or corporation submitting the bid, the NYCDOE bid number, the date of its presentation and the title of the supplies and/or services for which the bid is submitted.

3.3.7 Bid Quotation. Bidders are required to insert in ink on the schedule provided by the NYCDOE, the unit price for the stated unit of measure and the total price for each item which the bidder proposes to furnish and deliver. If the bidder fails to provide this information, the NYCDOE will assume that the items to be supplied are as indicated or referred to in the specifications. Failure to use ink may result in rejection of the bid.

3.3.8 Unit of Measure. All items must be bid in accordance with unit of measure specified. The NYCDOE may reject any bid if the unit of measure is changed. In the event of a discrepancy between the unit price and the extension, the unit price will govern.

3.3.9 Specifications. Bidders are to insert in the space provided, the brand, model or stock number they intend to furnish as a result of this quotation. Bidders offering alternate brand and/or model numbers or any other deviations from the specifications must clearly indicate such deviations on the bid blank. In the event the bidder fails to provide this information, the NYCDOE will assume that the items to be supplied are as indicated or referred to in the specifications.

3.3.10 Modifications. Bidders who alter prices including cross-outs, white outs or change prices inserted under unit price must submit with their bids a letter attesting to the fact that the changes were made by said bidder. Failure to do so may result in rejection of the bid.

3.3.11 Mistakes Discovered Before Opening. Bids may be modified or withdrawn by written notice to Executive Director, DCP before the time and date set for bid opening.

3.3.12 Confirmation of Bid. When DCP knows or has reason to conclude after bids have been publicly opened that a mistake has been made, DCP 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, DCP if the following conditions are met:

3.3.12.1 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 Chief Administrator or his designee may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the NYCDOE. An example is the failure of a bidder to return the number of signed bids required by the Request For Bids or Open Market Agreement.

3.3.12.2 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.

3.3.12.3 Mistakes Where Intended Correct Bid is Not Evident. 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 Chief Administrator or his designee makes the following determination:

- (1) the mistake was known or made known to DCP prior to vendor selection or within three days after the opening of the bid, whichever period is shorter;
- (2) the price bid was based on an error of such magnitude that enforcement would be unconscionable;
- (3) 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;
- (4) 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
- (5) it is possible to place NYCDOE in the same condition that had existed prior to the receipt of the bid.

3.3.12.3.1 Upon the approval of the Chief Administrator, DCP, the bid may be withdrawn. The contract shall either be awarded to the next lowest bidder or resolicited pursuant to this Temporary Procurement Policy. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

3.3.12.4 Mistakes Discovered After Vendor Selection. Mistakes shall not be corrected after vendor selection except where the Executive Director, DCP, makes a determination that it would be unconscionable not to allow the mistake to be corrected.

3.3.12.5 Determinations Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Executive Director, DCP, or his designee shall prepare a determination showing that the relief was granted or denied in accordance with this Temporary Procurement Policy.

3.3.13 Public Opening. Competitive sealed bids for purchases greater than \$15,000, shall be opened and read at a scheduled public bid opening which must be attended by at least two employees of the NYCDOE. One of the employees will open and read the sealed bids (at the day, date, time and place indicated on the solicitation) while the other will act as a witness to the opening. 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.

3.3.14 Late Bids. Bids which arrive after the date, time and place stated on the bid solicitation document will not be accepted and will be returned to the bidder unread.

3.3.15 Withdrawal of Bids. Following the five (5) business days after the bid opening, a bidder may not withdraw their bid before the expiration of one hundred eighty (180) calendar days from the date of bid opening of said bid unless otherwise provided by law. A bidder may withdraw their bid after that date only if they state such intent in writing prior to the mailing by the NYCDOE of a purchase order, notice of award, or acceptance of bids.

3.3.16 Tie Bid. Low tie bids are low responsive bidders that are identical in price, meeting all the requirements and criteria set forth in the bid. In case of low tie bids, the

Executive Director, DCP, or his designee shall break the tie in the following order of priority:

- (1) Select a New York City bidder.
- (2) Select a New York State bidder.
- (3) 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.

3.3.17 Samples. All samples, if required, are to be submitted within five (5) business days of request or as specified in the request for sample letter with no cost to the NYCDOE. The sample submitted must be indicative of the quality that the bidder intends to supply during the life of the contract. Delivery point of a sample will be indicated at time of request. All charges for delivery of a sample to the test point and pick-up of such sample upon completion of examination shall be at bidder's expense with no charge to the NYCDOE. Samples are for inspection, test, evaluation and comparison for compliance with specifications and standards outlined in the bid solicitation document. Samples of the specified brand may also be requested in order to conduct a thorough evaluation. All accepted samples not consumed in the testing process may be kept in the possession of the NYCDOE until the expiration of the agreement. Vendors will be responsible for arranging for pick up their samples within thirty (30) calendar days of the expiration of the contracts. Samples not picked up will become the property of NYCDOE.

3.3.18 Voluntary Price Reduction. The NYCDOE reserves the right to request voluntary price reductions in the event that any of the prices quoted are deemed high on individual items within an aggregate class, individual or contingency items.

3.3.19 Award. Award, if made, will be to the lowest formal responsible, responsive bidder complying with specifications, terms and conditions. Award shall be on an aggregate class basis as defined on bid blank or on an item by item basis, whichever is deemed to be in the best interest of the NYCDOE.

3.3.20 Single Bid. When a single bid has been received in response to a bid solicitation document, a vendor may be selected only after the Executive Director, DCP 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 agency, other vendors chose not to submit bids; that the bid submitted meets minimum requirements of the bid solicitation document; that the price is fair and reasonable; and that resolicitation is not in the best interest of the NYCDOE.

3.3.21 Notice of Award. Notices of award shall be posted on NYCDOE's website.

3.3.22 Rejection. The Executive Director, DCP may reject any or all bids and may elect to resolicit when it is determined to be in the best interest of the NYCDOE. The Executive Director, DCP may accept any part of any bid and reject the other part, if, in its opinion, such action would be in the best interest of the NYCDOE.

3.4 Thresholds for the Purchase of Professional Services Using Requests

	\$1 to \$250	\$250.01 to \$5,000	\$5,001 to \$25,000	\$25,000.01 to \$100,000	Over \$100,000
PROPOSALS ARE NOT REQUIRED	<u>X</u>				
3 PROPOSALS MUST BE SOLICITED VIA TELEPHONE OR IN WRITING. SUBMISSION BY FAX OR THE INTERNET IS PERMITTED.		<u>X</u>			
3 WRITTEN PROPOSALS MUST BE SOLICITED. PROPOSALS MAY BE SUBMITTED BY FAX OR THE INTERNET.			<u>X</u>	<u>X</u>	
MUST RECEIVE ACTUAL DETAILED RESPONSIVE PROPOSALS FROM AT LEAST 2 VENDORS				<u>X</u>	
FORMAL CONTRACT REQUIRED					<u>X</u>
ADVERTISEMENT IN THE "CITY RECORD" FOR A MINIMUM OF 7 DAYS IS REQUIRED					<u>X</u>
PROPOSALS RECEIVED FROM VENDORS MUST BE SEALED					<u>X</u>
PUBLIC NOTIFICATION OF AWARD IS REQUIRED					<u>X</u>
REQUEST FOR PROPOSAL (RFP) MUST BE ISSUED; EXECUTIVE SUMMARY REQUIRED. (An executive summary indicates the anticipated services, estimated cost, and why the procurement method is being used and must be approved by Chancellor or his designee.)					<u>X</u>
REQUEST FOR AUTHORIZATION REQUIRED					<u>X</u>

3.5 **Request for Proposals.**

3.5.1 Application. A Request for Proposals (RFP) is a publicly advertised written solicitation request to prospective vendors to submit written proposals, and between receipt of proposals and award, discussions with vendors may take place to resolve uncertainties in the proposal, advise vendors of deficiencies in meeting the NYCDOE's requirements, allow for resulting price changes, etc. The RFP method should be used for professional services where 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. Typical services may include staff development training, program evaluations, curriculum development, artistic performances from cultural institutions and other student outcome-related services. Contracts are awarded to the vendors whose proposals are determined to be the most advantageous to the NYCDOE.

3.5.2 Content of Request for Proposals. Requests for Proposals shall contain the following information:

- (1) statement of work or scope of services statement, performance requirements, and any special instructions;
- (2) the specific criteria and the relative weight of each criterion or category of criteria that will be used to evaluate the proposals;
- (3) minimum threshold criteria which must be met by proposers in order to be considered for award of a contract;
- (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 NYCDOE'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; and
- (15) NYCDOE contact information.

3.5.3 Notice of Request for Proposals. All RFPs requiring advertisement as set forth in **Section 3.4** must be advertised in the City Record at least once and on NYCDOE's website. The notice shall include the following:

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

- (2) how, when, and where the RFP is available;
- (3) the time, date, and location of any pre-proposal conference or site visit;
- (4) the date, time, and location for the receipt of proposals; and
- (5) contact information.

3.5.4 Late Proposals. A proposer may request submission of a late proposal which arrives after the date, time and place stated on the RFP for the receipt of proposals. The Executive Director, DCP or his designee may decide to accept such late proposal if in the best interest of the NYCDOE without prejudice to any party.

3.5.5 Negotiations. The NYCDOE may:

- (1) reject all proposals submitted;
- (2) accept any proposal or alternate as submitted without negotiations;
- (3) accept or negotiate on all proposals submitted which fall within a competitive range;
- (4) require revisions to, corrections of, or other changes to any proposal submitted as a condition to its being given any further consideration;
- (5) select for negotiations only the overall best proposal or alternate submitted, as determined by the NYCDOE;
- (6) negotiate with one or more proposers in any manner it deems fit, (such negotiations may be concurrent or sequential as the NYCDOE determines);
- (7) following the conclusion of any such negotiations, solicit Best and Final Offers (BAFO) utilizing an appropriate procedure;
- (8) re-open negotiations after the BAFO procedure, if it is in the NYCDOE's best interest to do so.

3.5.6 Withdrawals. After the opening of proposals, a request by a proposer to the NYCDOE for consent to the withdrawal of their proposal, because of an error made by said proposer, will be considered only under the following terms and conditions:

- (1) Request to withdraw proposal must be received in writing providing reasons for the request. This request is to be sent to the Chief Administrator, DCP, within three (3) business days following the date and time set for the opening of proposals.
- (2) Whenever any proposer requests the consent of NYCDOE to the withdrawal of their proposal, NYCDOE may grant or reject such request in any case which it deems just and proper. This request shall be made and such consent to withdraw shall be accepted by the proposer upon the express condition that said proposer shall be excluded from proposing again for the re-advertisement of proposals for the same item or proposal should no award be made. Should any proposer request the withdrawal of more than one proposal in any twelve (12) month period, they shall be disqualified from proposing for NYCDOE work for a period of one (1) year from the date of the second request.
- (3) Any request for a withdrawal of proposal within three (3) business days must be accompanied by a certified check made payable to NYCDOE to defray the cost of the processing in the amount specified in the RFP.
- (4) Following the three (3) business days after the proposal opening, a proposer may not withdraw their proposal before the expiration of ninety

(90) calendar days from the date of proposal opening. A proposer may withdraw their proposal after that date only if they state such intent in writing prior to the mailing by NYCDOE of a purchase order, notice of award, or acceptance of proposals.

- (5) The Chief Administrator, DCP will make the determination with respect to request for the withdrawal of proposals and that determination shall be final and binding. Any withdrawal of a proposal must be in its entirety (no partial withdrawals will be permitted), whether the withdrawal is within three (3) business days after the proposal opening or after the expiration of ninety (90) days from the date of proposal opening.

3.5.7 Evaluation of Proposals. All proposals received by the NYCDOE will be reviewed to determine if they meet all of the submission and minimum qualifications prescribed in the RFP. Proposals meeting these requirements will be evaluated and rated by an Evaluation Committee applying the evaluation criteria prescribed in the RFP. The Evaluation Committee shall consist 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 shall be required to submit a signed statement, in a format approved by the Executive Director, DCP or his designee agreeing to prohibitions on any conflicts of interest. No committee member shall report to or supervise another committee member.

3.5.7.1 Rating Sheets. Ratings 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 ratings sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained.

3.5.7.2 Outside Evaluators. The Executive Director, DCP or Chief Administrator may determine that it in the best interests of the NYCDOE for the Evaluation Committee to include persons who are not employees of the NYCDOE, provided however that such non-DOE employees may not constitute a majority of the Evaluation Committee.

3.5.7.3 Site Visits. The NYCDOE reserves the right to conduct site visits to verify facility or other information contained in a proposal and may require a proposer to make a demonstration/presentation of their services or submit additional written material in support of a proposal.

3.5.8 Single Proposal. When a single proposal has been received in response to a RFP, such proposal may be selected only after:

- (1) the Evaluation Committee has rated the proposal and deemed it to be acceptable in accordance with **Section 3.5.7**; and
- (2) the Executive Director, DCP 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, 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 NYCDOE.

3.5.9 Contract Award. The NYCDOE reserves the right to award a contract to other than the proposer offering the lowest overall cost. The contracts resulting from a solicitation shall be awarded to the qualified proposers whose proposals the NYCDOE

has determined to be the most advantageous, based on the evaluation criteria set forth in the RFP.

3.5.10 Notice of Award. Notices of award shall be posted on NYCDOE's website.

3.5.11 Rejection. The Executive Director, DCP may reject all proposals and may elect to resolicit when it is determined to be in the best interest of the NYCDOE.

3.6 Expedited Competitive Solicitation.

3.6.1 Policy. Expedited Competitive Solicitations (ECS) may be used for procurement of services under the circumstances and subject to the conditions set forth in this **Section 3.6**. Authority for approvals or determinations required by this **Section 3.6** shall not be delegated, unless otherwise stated herein.

3.6.2 Procedures.

- (1) An ECS may be considered when time constraints require procuring the services of a vendor quickly and use of the formal RFP process would not be practicable and/or advantageous. Under such circumstances, if there is a reasonable belief that competition exists in the marketplace, an ECS may be employed. Preliminary discussions with a vendor(s) to explore the feasibility of a proposed ECS may occur, but are not to be considered negotiations for the selection of a vendor.
- (2) The Executive Director, DCP shall justify the use of the ECS by making a determination that it is not practicable and/or advantageous to award a contract by ordinary competitive processes.
- (3) For prospective purchases over \$100,000, the Chief Operating Officer shall approve the use of the ECS method for a particular procurement, or for a particular type of procurement, prior to its implementation and the solicitation of vendors.
- (4) Notice of intent to conduct an ECS shall be published in the City Record and shall be posted on the NYCDOE's website in a location that is accessible by the public contemporaneously with its publication.
- (5) The publication requirement shall not apply to an ECS when the General Counsel or his designee has made a determination that such notice may disclose litigation strategy or otherwise impair the conduct of litigation by the NYCDOE.
- (6) The publication requirement for notice of intent to conduct an ECS shall be limited to posting on the NYCDOE website under the following circumstances:
 - (i) when the Chief Operating Officer determines that time constraints, beyond the NYCDOE's control make such advance notice impractical, or
 - (ii) when the Chief Operating Officer deems it necessary due to circumstances particular to the specific solicitation.
- (7) The NYCDOE shall negotiate with qualified vendors that have expressed interest unless the Executive Director, DCP determines for a particular procurement or for a particular type of procurement that it is in the NYCDOE's best interest to negotiate with fewer vendors, and the Chief Operating Officer approves such determination.

- (8) All awards shall be made based on best value including quality, experience, and price.
- (9) Notice of Award shall be posted on the NYCDOE's website.
- (10) The Executive Director, or designee, shall maintain a written record of negotiations and the basis for the contract award. For awards over \$100,000, a Request for Authorization shall be required.
- (11) If there is a sole response to an ECS the NYCDOE Committee on Contracts (**Section 3.8.5**) shall determine whether award of the contract is in the best interest of the NYCDOE and, if so, the basis thereof. Publication under **Section 3.6.2(4)** herein shall satisfy the notice requirement for the Committee on Contracts.

3.7 Pre-Qualification Solicitation and Multiple Task Award Contracts.

3.7.1 Introduction. Pre-Qualification Solicitation (PQS) is a procurement method by which a qualified pool of vendors are awarded contracts. To acquire services under \$25,000, the NYCDOE department or school uses the same procedures as they would to draw services from contracts derived through a RFP. To acquire services over \$25,000, there is an expedited vendor selection process (**Section 3.7.3**).

3.7.2 PQS Procedures.

- (1) The NYCDOE department or school defines program and eligibility requirements for each pre-qualified list/category of service. It is anticipated that these contracts will largely reflect the pedagogic professional services contracts and components of other contracts that currently exist.
- (2) The program and eligibility requirements will include:
 - (i) An overview and general explanation of services covered/desired
 - (ii) Provider/vendor qualification requirements
 - (iii) Base program requirements
 - (iv) Other criteria that will be used to determine eligibility
- (3) The vendor submits a request for prequalification to DCP with the following:
 - (i) Promotional literature or catalog describing the products
 - (ii) A list and brief description of available programs falling under each of NYCDOE category of service
 - (iii) Letters of recommendation
 - (iv) Price quotation form
 - (v) Cost/Price form, as required
 - (vi) VENDEX forms
 - (vii) Vendor abstract forms (for posting on the NYCDOE website)
 - (viii) Processing fee, as required
 - (ix) A valid certificate of insurance (listing coverage as required) and Worker's Compensation
- (4) DCP will verify the documentation submitted by the vendor and then forwards the following to the program office:

- (i) The promotional literature
 - (ii) The price quote form
 - (iii) Letters of recommendation
- (5) The program office reviews, approves/disapproves and transmits disposition back to DCP.
 - (6) In consultation with the program office, DCP reviews and negotiates pricing and terms. The NYCDOE Office of Equal Opportunity workforce review will be completed concurrently
 - (7) For contracts anticipated to exceed \$100,000, DCP prepares a Request for Authorization and circulates it for approval and signature by the Chancellor or his designee.
 - (8) DCP prepares contract documents, circulates for approval by the NYCDOE Office of Legal Services and New York City Corporation Counsel, and files with the Comptroller.
 - (9) Upon filing with the Comptroller, DCP posts vendor abstract forms on the NYCDOE website.

3.7.3 Multiple Task Award Contracts (MTAC) Procedures.

- (1) If anticipated spending is below \$25,000, the NYCDOE department or school may identify a single prequalified vendor and engage such vendor's services.
- (2) Statement of Work (SOW) Release. If anticipated spending is above \$25,000, the NYCDOE department or school develops a brief description of the work that is required and who will be served. This SOW needs to be sufficiently detailed to offer eligible prequalified vendors reasonable guidance on how to craft a proposal.
- (3) DCP transmits the SOW to the prequalified vendors identified by the NYCDOE department or school and additional prequalified vendors as necessary where providers are at least theoretically available. The number of vendors solicited is based on anticipated spending as follows:
 - (i) Up to \$25,000 – The MTAC process is not required.
 - (ii) \$25,000 to \$100,000 – Three prequalified providers. (The NYCDOE department or school selects two prequalified vendors and DCP picks one additional prequalified vendor at random).
 - (iii) \$100,000 to \$250,000 – Five prequalified providers. (The NYCDOE department or school selects three prequalified vendors and DCP picks two additional prequalified vendors at random).
 - (iv) Over \$250,000 – All appropriately listed prequalified vendors.
- (4) Upon receipt of a SOW, prequalified vendors have between three (3) and thirty (30) business days to respond with a proposal that includes the following:
 - (i) A description of services proposed.
 - (ii) A detailed price proposal that is targeted to specifically address the SOW. Said price proposal must include unit prices that are equal to or lower than provided for in their prequalification contract.

- (iii) A list of candidates and resumes for those who would likely perform the work.
- (5) Evaluation and Selection of Vendors. Evaluators appointed by the Principal, Assistant Principal (AP) or equivalent personnel, will review and evaluate the proposals based on the award criteria. Unless otherwise prescribed in advance by the NYCDOE department or school, the selection criteria to evaluate the quality of the proposal will be as follows:
- (i) Program plan – 25%
 - (ii) Experience – 25%
 - (iii) Proposed personnel – 25%
 - (iv) Price – 25%
- The makeup and size of the evaluation committee is based upon anticipated spending as follows:
- (i) Up to \$25,000 – Not applicable as the NYCDOE department or school may identify a single prequalified vendor and directly engage such vendor's services.
 - (ii) \$25,000 to \$100,000 – A single individual authorized by the Principal or NYCDOE department.
 - (iii) Over \$100,000 - A committee of at least three individuals, none of whom may report to anyone else on the committee.
- (6) In some instances, and at the NYCDOE department or school's discretion, prequalified vendors may be invited to meet with the committee and discuss their proposals and pricing more fully.
- (7) After the evaluation of the quality of the proposals is complete, the appointed individual/committee selects the best overall proposal taking price into account and completes the award recommendation (a very brief and generalized description of the rationale for the selection; if the least expensive proposal is not recommended, an explanation as to why the more expensive vendor was chosen is required to ensure that best value has been documented) and evaluation forms and transmits same to the principal, responsible Assistant Principal or head of NYCDOE department.
- (8) The Principal or Assistant Principal or equivalent personnel reviews the award recommendation and, upon approval, transmits same to DCP as a matter of record along with the following:
- (i) A purchase order.
 - (ii) The name and contact information for an individual who will serve as the NYCDOE project/contract manager.

3.8 Non-Competitive Solicitation Procurements.

Where competitive solicitation is not practicable or advantageous, alternative methods of procurement may include:

- (1) Listing Application;
- (2) Sole Source;
- (3) Named Grant;
- (4) Purchases through Governmental Contracts; and

- (5) Procurements approved by the Committee on Contracts or Executive Director of DCP or other authorized persons as set forth below.

In all cases, the most competitive method of procurement which is appropriate under the circumstances shall be used as determined by the Executive Director, DCP.

3.8.1 Listing Application. A Listing Application is established for the purchase of direct student services, published or copyrighted materials, 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 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 are considered teaching tools and 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 the NYCDOE.

3.8.1.1 Establishing a Listing Application.

If expenditures in a fiscal year are anticipated to exceed \$25,000 on a system-wide basis, DCP is authorized to 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. A Request for Authorization shall be prepared for Listing Applications exceeding \$100,000.

A vendor is required to obtain one Letter of Intent from a School Support Organization (SSO) Network Leader or three Letters of Intent from school principals. These letters should include an instructional justification for the desired products or services and must include anticipated expenditures for the current fiscal year. The vendor must submit the signed Letters of Intent to DCP along with a company check or money order in the amount designated by the NYCDOE (payable to the NYCDOE) in order to receive the standard Listing Application contract package.

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. The NYCDOE may execute a Listing Application (Requirements Contract) for a term not to exceed seven (7) years. Listing Applications (Requirements Contract) may be available for use on a system-wide basis and may be canceled by the NYCDOE for convenience or poor performance by the vendor.

3.8.2 Sole Source.

Sole Source may be used when the NYCDOE identifies a vendor as the only source for obtaining certain commodities or services and therefore, does not have to engage in a competitive solicitation. Prior to authorization, the NYCDOE must document why Sole Source is being used. Sole Source may be used under the following circumstances:

- (1) Documentable evidence that there is no alternative source available for the procurement of the item.

- (2) Use of copyrighted or patented materials if materials are only available from an exclusive source.
- (3) Organizational membership fees, postage, subscriptions, including electronic subscriptions, for magazines and periodicals, tickets/administrative fees, and conferences by non-NYCDOE organizations.

3.8.2.1 Authorizations for Sole Source Procurements.

Monetary Threshold	Approval From
Up to \$15,000	Principal, Integrated Service Center or Central Department Head
\$15,000.01 to \$100,000	Executive Director, DCP
\$100,000.01 and above	Chancellor or his designee

3.8.3. Named Grant.

When a grant received by the NYCDOE specifically identifies the vendor that is a key component of receiving the grant award the assumption is that the grantor determined that the named vendor is qualified and willing to fulfill the requirements of the grant and that further solicitation is not necessary.

3.8.4 Purchases through other Governmental Contracts.

Consistent with applicable law, 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 may be used by the NYCDOE. Additionally, contracts of other states within the United States that were competitively solicited may be used by the NYCDOE with the express authorization of such state. If an item is purchased by NYCDOE hereunder, solicitation is not required except as specifically required by such contract.

3.8.5 Committee on Contracts and Other Exceptions to Competitive Solicitations.

The Chancellor has established a Committee on Contracts to review and recommend exceptions to competitive solicitations for the purchase of professional services or technology related services and educational software where other methods of procurement are not practical or possible and it would be in the best interest of the NYCDOE to waive the standard requirement of a competitive solicitation.

The Committee on Contract includes representatives from DCP, Office of Legal Services, the Office of Auditor General, and other NYCDOE offices.

These procedures maintain the integrity of the procurement process by ensuring the NYCDOE receives best value with the award of contract based upon a combination of cost, quality and efficiency. The chart below sets forth the approval process for contracts dependent upon the monetary threshold.

3.8.5.1 Approval Process.

Monetary Threshold	Approval From
Up to \$25,000	Principal or Integrated Service Center or Head of Office
\$25,000.01 - \$100,000	Executive Director, DCP
\$100,000 and above	Committee on Contracts

- (1) For exceptions for professional services and technology up to \$25,000, processed by Principals or equivalents, the same documentation described in (2) below should be created and maintained on site at office of the approval authority.
- (2) If the cost for professional services required will be \$25,000.01 to \$100,000, the purchaser must submit the following documentation to the Executive Director, DCP:
 - (i) A detailed cost breakdown of the services.
 - (ii) A statement clearly explaining why competitive solicitation was not used.
 - (iii) Explanation of why the proposed vendor was selected.
 - (iv) Pertinent information concerning other vendors who have been contacted, i.e., why they cannot provide the service, pricing offered, etc.
- (3) If the cost for professional services required will be greater than \$100,000, the purchaser must forward the request to the Chancellor's Committee on Contracts for a determination.
- (4) A formal contract must be executed.
- (5) A Public Notification of Award is posted on the NYCDOE's web site.

3.9 Emergency Conditions.

An emergency condition is an unforeseen danger to life, safety, property or a necessary service. Upon written determination of the Chancellor or his designee, the NYCDOE may procure items or services to avoid or mitigate the emergency condition and the contract shall become effective immediately. An emergency procurement shall be made with such competition as is practicable under the circumstances. The written determination of the basis for the emergency procurement shall be filed with the Comptroller when the contract is filed with the Comptroller.

3.10 Contract Extensions.

3.10.1 Policy.

- (1) Contract extensions may be authorized for a cumulative total not to exceed an additional one year period. Any extension term authorized under this provision shall not occur until the exhaustion of all renewals and extensions specifically provided for under said contract. This provision shall apply to full value and requirements contracts.
- (2) Any extension granted under the authority of this provision must be subject to the same or substantially equivalent terms and conditions of the original contract being extended.
- (3) Pricing for the extension term must be based upon the rates/fees in the original contract, subject to any price escalation that the original contract may have permitted. An extension of term under this provision may not be used to increase costs for services already rendered. This provision may only be used to extend time for completion of services or to purchase additional services during the extended term.
- (4) This provision shall not apply to:
 - (i) Contracts that were awarded based upon an emergency declaration, or

- (ii) Contracts procured by competitively sealed bidding if executed prior to September 15, 2008, or
- (iii) Contracts whose extension will be funded by tax levy funds when the original budget was funded by non-tax levy funds, i.e., grant.

3.10.2 Procedures.

- (1) All requests for extensions under this section shall be documented setting forth the reasons why it is in the best interest of the NYCDOE to extend the contract.
- (2) Contract extensions for no additional cost may be authorized by the Executive Director, DCP for a period not to exceed one hundred eighty 180 days.
- (3) Contract extensions for a cumulative total amount not to exceed \$100,000 must be authorized by the Chief Operating Officer of the NYCDOE, or Chancellor's designee, upon the recommendation of the Executive Director,
- (4) When a contract's extension exceeds a cumulative annual amount of \$100,000, the Chancellor or his designee shall be required to approve all such extensions. A Request for Authorization shall be prepared for contracts extensions exceeding \$100,000.
- (5) All extensions must be executed, in writing, by the vendor and the NYCDOE and once properly approved in accordance with this section, the extension shall be incorporated as part of the original contract.

3.11 Contract Amendments.

Any modification to a contract not involving an increase in cost shall be reviewed and approved by DCP and the Office of Legal Services, subject to the Chancellor or his designee's approval. Any modification to a contract involving an increase in cost greater than \$25,000 shall require Panel approval and shall be forwarded to the New York City Corporation Counsel for review.

3.12 Franchises, Concessions and Revocable Consents.

Franchises and concessions are awarded in the same manner as the procurement processes set forth in this **Section 3**. Revocable consents are made through a permitting and petitioning process initiated by the requesting entity.

4. PROCEDURES FOR TECHNICAL, CONSULTANT, OR PERSONAL SERVICES

4.1 Overview.

This **Section 4** applies only to the use of *individuals* as consultants. Any formal agreement relating to the services of a group, corporate body, institution or individual who is incorporated must be arranged by contract in accordance with requirements set forth in **Section 3** herein.

Consultants are temporary, occasional personnel used to assist in the planning and evaluation of a program or in specialized and technical areas which are not accommodated within the duties and responsibilities of any available pedagogical or administrative staff member.

The types of NYCDOE consultants acquired under this **Section 4** include:

- (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 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 are employed typically on an ad hoc basis for the duration of a particular case

This **Section 4** may not be used to retain temporary clerical workers.

4.2 Decision to Procure Technical, Consultant, or Personal Services.

Factors to be considered in making such decision include whether using procurement is one or more of the following:

- (1) desirable to develop, maintain, or strengthen the relationships between non-profit and charitable organizations and the communities where services are to be provided;
- (2) cost-effective; or
- (3) necessary to:
 - (i) obtain special expertise,
 - (ii) obtain personnel or expertise not available within the NYCDOE,
 - (iii) provide a service not needed on a long-term basis,
 - (iv) accomplish work within a limited amount of time, or
 - (v) avoid a conflict of interest.
- (4) other reason as documented by the Authorizing Official if in the best interest of the NYCDOE.

4.3 Process to Procure Technical, Consultant, or Personal Services.

The following process for procuring and using technical, consultant or personal services is required in order to:

- Broaden the pool of qualified consultants;
- Reduce consultant costs;
- Improve the quality of consultant services;
- Assure the prudent and economical use of public moneys in the best interests of the taxpayers;
- Reduce the risk of impropriety; and
- Guard against favoritism, improvidence, extravagance, fraud and corruption.

The NYCDOE shall engage in the following eight step process for procuring and using technical, consultant or personal services:

- (1) Determine that an employee or other city agency cannot perform that service;
- (2) Determine whether consultant services should be acquired via an individual (**Section 4**) or a firm (**Section 3**);
- (3) Prepare a solicitation if required;
- (4) Nominate the consultant;
- (5) Approval of the consultant;
- (6) Process payments (with the exception of the final payment);
- (7) Evaluate the consultant's deliverables; and
- (8) Process final payment.

4.3.1 If the total expense for a project is anticipated to be \$25,000 or less, no solicitation is required. However, the organizational unit using the consultant must document how and why the consultant was identified for the project.

4.3.2 If the total expense for a project is anticipated to be over \$25,000 but not more than \$49,999, an informal competitive solicitation must be conducted. Three proposals must be solicited via telephone or in writing. Submission by facsimile or internet is permitted. In those instances between \$25,000 and \$49,999 for which there are extenuating circumstances that preclude an informal competitive solicitation, a waiver request must be submitted by the organizational unit and approved by the Deputy Chancellor and/or his/her designee, to the Chief Executive Officer of the Division of Human Resources (DHR), prior to the commencement of services. DHR will review the projected use of a consultant with respect to the appropriateness of the nominee's qualifications, the proposed rate of compensation and the length of service when earning thresholds are scheduled to be between \$25,000 and \$49,999.

4.3.3 If the total expense for a project is anticipated to be over \$50,000 but not more than \$100,000, a formal RFP, including public advertising, is required as set forth in **Section 3**. A formal contract must be prepared.

4.3.4 If the total expense for the project is anticipated to be over \$100,000, in addition to the requirements in **Section 4.3.3**, a Request for Authorization must be approved by the Chancellor or his designee.

4.3.5 The Division of Financial Operations must verify that the necessary funds are available to provide compensation to the individual who is proposed for service as a consultant.

4.3.6 The Chancellor or his designee must approve any exceptions to regulations described in this **Section 4**, including those concerning limitations on consultant utilization and rates of pay. Requests for exceptions must be made in writing and submitted to the Chief Executive Officer of DHR.

4.3.7 The Office of the Auditor General may conduct audits to confirm the location and nature of the consultant's assignment and the accuracy of records of dates of service.

5. INTERNAL CONTROLS AND DELEGATION OF RESPONSIBILITIES

The processes requiring documentation, review and approval for expenditures, the use of approved lists, and all other regulations are designed to safeguard the use of public funds and to provide accountability. All NYCDOE departments and schools are responsible for establishing effective oversight procedures.

5.1 Review of Purchase Documents.

Purchase documents must be reviewed for completeness and accuracy of calculations and purchasing documents must be reviewed for conformance with:

- (1) Bidding regulations and procedures;
- (2) Contract (items, stated prices, delivery instructions etc. agree with contract);
- (3) Criteria for items that must be ordered by requisition; and
- (4) Inspection regulations.

5.2 Contract and Contractor Performance.

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. The NYCDOE will assure that all material goods, supplies and services purchased by the NYCDOE 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.

5.2.1 Contractor performance shall be considered when determining whether an existing contract should be extended, renewed, terminated, or allowed to lapse.

5.2.2 Notification to the contractor of deficient performance shall be made as soon as practicable.

5.3 Deliveries of Commodities.

5.3.1 Inspection of Deliveries. It is the responsibility of the receiving site supervisor to assure that there is a process in place to inspect all deliveries and ensure that the following questions can be answered in the affirmative prior to approving the acceptance of the items:

- (1) Is the quantity correct?
- (2) Is the brand correct?
- (3) Does the item number match?
- (4) Does the product match the description?
- (5) Is it in good condition?
- (6) Is the warranty specified?
- (7) Is there compliance with the terms as stated on the purchase order?
- (8) Have these items been added to inventory?

5.3.2 Certification of Deliveries. The receiving site supervisor shall enter certification of delivery directly into the NYCDOE'S accounting system, FAMIS, indicating that goods ordered have been received, examined and found to be correct as to quantity and quality.

5.4 Change Notice.

Priorities and availability of commodities can change after a purchasing document has been promulgated and sent to a vendor. If this should occur, a Change Notice processed through the FAMIS Portal must be generated to adjust in whole or part a previously encumbered Purchase Order. The Change Notice serves as official notification to a vendor to increase, decrease or cancel an order via FAMIS. A Change Notice must be printed and sent to vendor.

5.5 Recordkeeping and Files.

5.5.1 **Documentation Requirements**

NYCDOE is required to create and maintain a file for every contract, franchise, revocable consents and concession containing information pertaining to the solicitation, award and management of same. Such files shall be open to public inspection in accordance with law. Such files shall include but not be limited to the following documentation:

- (1) A written justification for the basis, including the efficiency, benefit, and necessity, for awarding a contract using procurement methods other than competitive sealed bidding as set forth in **Section 2.5**.
- (2) Certification of the Chancellor or his designee that the procedural requisites of the New York State Education Law have been met prior to filing of a contract, revocable consent, franchise, or concession as set forth in **Section 2.12**.
- (3) A written determination of the basis for an emergency procurement as set forth in **Section 3.9**.

5.5.2 **Retention of Records and Documents.**

The following chart reflects various documents and records and the retention period for each.

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
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 or services which were canceled without a purchase being completed:	1 year after subsequent procurement of the same goods or services completed under a re-initiated procurement, or 1 year after decision to not purchase such goods or services

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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5.6 Reporting Non-Compliance With Regulations.

Authorizing Officials are charged with ensuring that public funds are spent properly. The Authorizing Official must report any non-compliance with this Temporary Procurement Policy to the Office of Auditor General and take any necessary disciplinary action.

5.7 Other Internal Controls Areas.

5.7.1 Central Offices, Integrated Service Centers and schools must track and monitor expenditures.

5.7.2 Adequate supporting documentation must be on file prior to paying for goods/services.

5.7.3 Delivery dates and receipt of services should be documented (signed and dated) prior to payments to avoid expenditures being charged to an incorrect fiscal year.

5.7.4 All processed invoices must have an indication to the effect that they have been paid. (E.g., Voucher Number).

5.7.5 Services must be rendered prior to payments to vendors unless unique circumstances require prepayments.

5.7.6 Vendors should be required to issue a fully detailed invoice that breaks down price, quantity, amounts, dates of service, description of service/goods, etc. These invoices must be compared to Purchase Orders and other related documents to ensure that goods/services are in conformity with initial arrangements by vendor and purchaser.

6. PROTEST AND DISPUTE PROCEDURES

6.1 Bidder Protest Procedures.

6.1.1 Protests will only be accepted from bidders, proposers or prospective bidders or proposers whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

6.1.2 Protests relating to procurements and/or decisions as to the status of commodities and services are to be forwarded to the Executive Director, DCP, 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 determination.

6.1.3 Contract awards cannot be made until resolution of the protest, unless the Executive Director, DCP decides otherwise as described in **Section 6.1.15**.

6.1.4 If a protestor decides to withdraw its protest for any reason, the DCP Procurement Representative will document the procurement file accordingly and memorialize this in writing to the potential protestor.

6.1.5 The Protest Officer may seek input as he or she deems appropriate, including a recommended disposition from individuals previously involved in the procurement, including but not limited to the Procurement Representative.

6.1.6 A protest found by the Protest Officer to be patently without merit or not brought in a timely manner may be rejected without further consideration. Protest submissions should be factual, complete, concise, logically arranged and clearly state all grounds for the protest.

All protests must include the following information:

- (1) Name, address, telephone and facsimile numbers of protestor.
- (2) Solicitation or contract number.
- (3) Detailed statement of the legal and factual grounds of protest, including copies of relevant documents.
- (4) Statement as to what relief is requested.

6.1.7 The Protest Officer, at his or her sole discretion, may hold a hearing, conduct interviews, request either additional written or oral submissions, request the submission of material samples, or take any other actions he or she deems necessary in making a recommendation/disposition concerning the protest.

6.1.8 The Protest Officer should respond at least generally to each substantive issue raised in the protest. The Protest Officer will provide a copy of the protest determination to the Executive Director, DCP for review.

6.1.9 The Protest Officer shall promptly transmit his determination to the protestor and any other party he deems likely to be affected by the determination, as well as to the person who designated him and, as appropriate, the Procurement Representative responsible for the procurement. No consideration will be given to additional protests by the vendor on the determination of the original protest.

6.1.10 The Protest Officer's determination may be adopted or overruled by the Executive Director, DCP within ten (10) business days. Failure to make a determination within ten (10) business days shall be deemed an adoption of the Protest Officer's determination. The decision of the Executive Director, DCP shall be deemed a final agency action.

6.1.11 Time for Filing Protests with NYCDOE. Protests with respect to any aspect or decision of NYCDOE shall be filed within ten (10) business days from the date the protestor knew or should have known the facts forming the basis of such protest.

6.1.12 Protests Received Prior to Bid Opening and/or Prior to the Closing Date For Proposals.

- (1) Protests based upon restrictive specifications or alleged improprieties in any type of solicitation, which are apparent prior to bid opening or the closing date for receipt of initial proposals, must be filed in accordance with **Section 6.1.11** above and in no event later than five (5) business days prior to bid opening or five (5) business days prior to the closing date for receipt of initial proposals.
- (2) If warranted, the Procurement Representative will endeavor to issue an addendum to all bidders/proposers informing them that a protest was received.

6.1.13 Protests Received Before Award But After Bid Opening and/or After the Closing Date for Initial Proposals.

- (1) The Procurement Representative of the unit handling the procurement being protested will provide written notice of a protest to all bidders or proposers whose direct economic interest would be affected. Where appropriate and practicable, such interested parties will be given an opportunity to comment.
- (2) Since award of the contract will be held pending the disposition of the protest, in order to avoid the need for readvertising, the Procurement Representative will request bidders/vendors in writing to hold their price beyond the timeframe stated in the solicitation.

6.1.14 Protests Received After Award.

- (1) Only protests received within two (2) calendar weeks after posting of the notice of award of a contract shall be considered. Protests received more than two (2) calendar weeks after award of a contract shall be considered an informal inquiry and referred to the appropriate parties who are administering the contract.
- (2) The Procurement Representative will provide written notice of a protest to the Contractor that received the contract award.
- (3) Concurrent with the assignment of the Protest Officer, the protest should be reviewed by the Procurement Representative, in consultation with the Executive Director, DCP, to consider the implications of the protest to the contract award. When there is a significant possibility that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to NYCDOE's interest, the Procurement Representative should consider a mutual agreement with the Contractor to suspend performance on a no-cost basis pending resolution of the protest.

6.1.15 Award of Contract Prior to Protest Determination.

- (1) The Executive Director, DCP may determine that an award must be made prior to resolution of the protest when the Executive Director, DCP determines that:
 - (i) The items to be procured are urgently required; or
 - (ii) Delivery or performance will be unduly delayed by failure to make the award promptly; or

(iii) Failure to make prompt award will otherwise cause undue harm to NYCDOE.

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

6.2 Contractor Dispute Resolution.

6.2.1 In the event the Contractor and the NYCDOE are unable to resolve their differences concerning a determination by the NYCDOE, the Contractor may initiate a dispute in accordance with the procedure set forth in this **Section 6.2**. Exhaustion of these dispute resolution procedures shall be a precondition to any lawsuit permitted hereunder.

6.2.2 The Dispute Resolution Officer (“DRO”) selected by the Executive Director of DCP 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.

6.2.3 All such disputes shall be submitted in writing by either party to the DRO, together with all evidence and other pertinent information with regard to such questions, in order that a fair and impartial decision may be made. The DRO shall render his or her decision in writing and deliver a copy of same to the parties within forty-five (45) 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 (90) 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. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice. The DRO’S decision shall be deemed a final agency action.

6.2.4 The DRO may formally decline to hear the Contractor’s dispute; in such instance, the NYCDOE’s Contract Manager’s decision shall be deemed final agency action.

6.2.5 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.

6.2.6 If the Contractor protests the determination of the DRO, or of the Contract Manager if such determination is deemed the final agency action, 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 or the decision of the Contract Manager, as applicable, 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 or the Contract Manager, as applicable, prior to the making of his or her decision.