

THE NEW YORK CITY DEPARTMENT OF EDUCATION  
JOEL I. KLEIN, *Chancellor*



**REQUEST FOR PROPOSALS**  
No. R0060

**Title: Partnership School Support**

Sealed proposals will be received by the  
Division of Contracts and Purchasing  
Department of Education, City of New York  
65 Court Street, Room 1202  
Brooklyn, New York 11201

**Until: 11:30 A.M. On: February 26<sup>th</sup>, 2007**

PROPOSALS MUST BE RECEIVED NO LATER THAN THE ABOVE DUE DATE AND TIME

**PRE-PROPOSAL CONFERENCE WILL BE HELD ON:**

**February 7<sup>th</sup>, 2007** at 2:00pm

St. Francis College auditorium, 182 Remsen Street, Brooklyn, New York

*Please bring a copy of the RFP with you to the Conference.*

**FOR ADDITIONAL PROCUREMENT INFORMATION SEE OUR**

**WEBSITE: <http://schools.nyc.gov/DCP>**

This Request for Proposals is issued by  
Division of Contracts and Purchasing  
65 Court Street, Brooklyn, NY 11201  
Telephone: (718) 935-2300  
Fax: (718) 935-5117

**EACH ENVELOPE SUBMITTED MUST BE LABELED AND EVERY  
LABEL MUST REFERENCE THE RFP NUMBER**

REQUEST FOR PROPOSALS # R0060

Table of Contents

**Section 1** **Page**  
Program Summary, Background and Purpose of the RFP.....3

**Section 2**  
Minimum Qualifications .....5

**Section 3**  
Scope of Services.....6

**Section 4**  
Proposal Requirements.....11

**Section 5**  
Proposal Evaluation Process.....13

**Section 6**  
Proposal Package Format.....14

**Section 7**  
RFP Timetable & General Information.....17

**Section 8**  
Contract Term.....21

**Section 9**  
Type of Contract.....21

**Section 10**  
Proposer Checklist.....21

**Appendices**

- Appendices A1 – A5 No Proposal Response Form, Insurance, Price Certification, Web-Based Application Requirements, and Minority and Women Owned Business Entities Participation
- Appendix B - Terms and Conditions
- Appendix C - Work Order Form
- Appendix D - Invoice Form
- Appendix E1 - Proposal Form
- Appendix E2- Program Plan-Narrative
- Appendix F - Pricing Template
- Appendix G - Cost Breakdown Worksheet

**FOR PURPOSES OF THIS RFP, “WE,” “US” OR “OUR” SHALL MEAN THE NEW YORK CITY DEPARTMENT OF EDUCATION (NYCDOE), AND “YOU” OR “YOUR” MEANS THE ENTITY SUBMITTING THE PROPOSAL TO NYCDOE.**

**ALTHOUGH THIS AGENCY IS BEING REFERRED TO AS NYCDOE, FOR CONTRACT AND INSURANCE PURPOSES, THE AGENCY IS STILL THE BOARD OF EDUCATION, AND THEREFORE, THE CONTRACTS AND INSURANCE CERTIFICATES STILL MUST REFERENCE THE BOARD OF EDUCATION OF THE CITY OF NEW YORK.**

**SECTION 1 PROGRAM SUMMARY, BACKGROUND, AND PURPOSE OF THE REQUEST FOR PROPOSALS (RFP)****1.1 PROGRAM SUMMARY**

The New York City Department of Education (NYCDOE) is seeking proposals from organizations qualified to provide support, coaching and guidance to the leadership of individual schools that elect to receive services from providers selected under this RFP. Partnership School Support refers to the provision of a set of services to support principals, school leadership teams and school staff in improving student performance and achieving school level accountability goals, as described in Section 3 of this RFP. A provider will not perform direct instructional or educational services, or be responsible for performing statutory duties, including those of the Panel for Educational Policy, the Chancellor, the Community Superintendents, and Principals, that may not be delegated by the NYCDOE; however, the provider will assist principals with school operation, planning, and enhancement of school programs.

The NYCDOE will retain ultimate decisional authority and control over all services called for in this RFP. Individual schools and school leaders will remain responsible for fulfilling the Department's accountability goals and conforming school operations with both law and relevant NYCDOE directives. School principals will direct educational services, as well as provider services, as they deem necessary to improve student performance and achieve school level accountability goals.

The Partnership School Support model described herein is designed to promote student achievement by providing the NYCDOE with access to alternative models for support and will further empower school leaders by giving them a choice among models of support. It will also allow the NYCDOE to infuse greater accountability into relationships with external organizations that provide support to schools with the expectation that this will, in turn, result in improved support to schools and improved student performance.

In addition to provider options generated by this RFP, schools will also have the option of selecting internal support, such as the Empowerment Support Organization or Learning Support Organizations being developed internally to the NYCDOE. Each of these organizations has the same basic responsibility in

relation to the schools: supporting schools and school leaders in the school's task of improving student performance and improving school level accountability results.

The NYCDOE anticipates entering into agreements with multiple vendors resulting from this RFP. Schools will be notified of those providers that are awarded contracts by the NYCDOE under this RFP. The NYCDOE anticipates matching school interest with Partnership Support Organizations as follows:

1. NYCDOE will select providers under this RFP that are qualified to provide Partnership School Support services to schools.
2. Once RFP selections have been made and internal models developed, a package of information on all school support options will be disseminated to school leaders. Individual school leaders, in consultation with their school leadership teams and subject to the approval of the Chancellor or relevant community superintendent, will identify the School Support Organization with which they wish to work and alternate School Support Organizations in the event that their first choice is unavailable, in rank order. School leaders will be able to designate Partnership Support Organizations, Learning Support Organizations or Empowerment Support in any order.
3. NYCDOE will match individual schools that have indicated an interest in receiving services from a provider selected under this RFP with such a provider, taking into account schools' rankings of providers, as well as the capacity of each provider and any limiting parameters to the capacity of providers. We anticipate that vendors will be required to provide support to a minimum of 10 schools. However, the NYCDOE reserves the right to adjust this number up or down. Providers must serve all schools to which they are matched. There is no guarantee that a provider will be selected by a predetermined number of schools (or by any school). The provider shall not give any gift or anything of value to any NYCDOE personnel to induce them to select the provider as the designated provider under this RFP.
4. Schools will receive all forms of support described by this RFP, whether they select an internal or external School Support Organization. If a school selects a Partnership Support Organization, services will be provided to that

school for a two-year minimum school-level commitment with an opt-out provision and opportunity for annual school-level renewal thereafter up to the contract term.

However, the NYCDOE may decide within its discretion (including on the basis of issues identified by a school served by the provider), that the relationship between that provider and school should be terminated earlier. Such a termination will not necessarily result in a termination of the provider's relationships with other schools. In addition, if at any time such a termination occurs, or if at the end of the agreed upon term a school opts out of the support relationship, the NYCDOE makes no commitment that another school will elect that provider.

It is anticipated that services will begin July 1, 2007 and will run through June 30, 2012. The term of the contract between the provider and NYCDOE resulting from this RFP will be five (5) years, with an option to extend for up to an additional five (5) years. The length of the individual agreements between the provider and individual schools may vary.

## **1.2 BACKGROUND AND PURPOSE OF THE REQUEST FOR PROPOSALS**

One of the central goals of the NYCDOE's *Children First* school reform effort is to provide more high quality educational options for all students. Key to this strategy is the development of a portfolio of school support options to ensure the innovative, effective, and accountable operation of New York City schools. Examples of these support options currently include aspects of the regional structure currently tailored to support school management, and the Empowerment Schools network teams, which grew out of the successful Autonomy Zone pilot launched in 2004. The expansion of choices of school support to include providers external to the NYCDOE provides an ideal opportunity to pioneer another innovative approach: exploring alternative ways to provide support to school leaders and leadership teams in educating students and in achieving accountability targets. (See Exhibit [1] for a description of the Empowerment Schools support team model)

## **SECTION 2 MINIMUM QUALIFICATIONS**

All proposals received on or before the proposal due date and time and at the location specified in the RFP will be evaluated to

determine whether they meet the following Minimum Qualifications set forth in this section. If you do not meet these Minimum Qualifications, your proposal will not be evaluated further:

- 2.1 Proposer must be an organization. **Individuals are not qualified under this RFP.**
- 2.2 Proposer must be able to document at least three (3) years of experience as an organization providing services in or to public schools on a paid or unpaid basis.

(Detail this information in Section 1 of Appendix E1, Proposal Form)

**IF YOUR PROPOSAL DOES NOT CLEARLY EXHIBIT ALL OF THE ABOVE, THEN YOUR PROPOSAL WILL NOT BE FURTHER EVALUATED.**

### **SECTION 3 SCOPE OF SUPPORT SERVICES**

- 3.1 The successful proposer(s) shall be required to perform the following support services on behalf of the schools and school leaders assigned to them pursuant to the matching process described in Section 1.1, in a manner consistent with all applicable laws, court orders, regulations, written Board policies, Board directives, and collective bargaining agreements. Please specify the systems, resources, and techniques for providing support to schools, being as specific as possible, for each of the following:

#### **1. Accountability and instructional supports**

The provider shall assist school leadership, school leadership teams, and the school community in developing school plans to improve student achievement, as reflected in improved accountability results. At a minimum:

- i. The provider shall assist in the effective implementation of NYCDOE assessment and accountability requirements. The NYCDOE will provide training to schools and providers in the operation of the NYCDOE's accountability system.
- ii. The provider shall assist in the development, implementation, evaluation, and enhancement of the instructional program, in support of existing curricula, for general education, special education, English Language

Learners (ELLs), arts, health and fitness, and academic intervention including summer and out-of-school-time instructional programs.

- iii. The provider shall assist schools in the identification and dissemination of effective practices related to school organization and instruction.
- iv. The provider should describe if and how they will assist the school in the identification of factors negatively affecting student achievement and school performance, beyond the NYCDOE's accountability framework, and if and how they would support schools in addressing these factors.

Providers will not be responsible for assisting the NYCDOE with respect to the identification and promulgation of curricular and instructional standards and policies, or other system-wide functions, including system-wide accountability and assessment functions. The NYCDOE will develop and publish Progress Reports and Quality Reviews for each school in the system. Providers will not be responsible for providing instruction for summer or out-of-school time instructional programs.

## 2. Special needs services coordination

The provider shall assist schools in designing programs and services to improve the achievement of special needs students, including ELL and Special Education students. This support could include:

- i. The identification and dissemination of effective practices in assessment and instruction for special needs students
- ii. Technical assistance aimed at increasing and accelerating performance gains for all special education and ELL students.

Providers will not be responsible for assisting the NYCDOE with system-wide policy development, support to Committees on Special Education, or system-wide initiatives and compliance monitoring.

## 3. Youth development support

The provider shall assist the school in developing and enhancing co-curricular and affective supports for students, designed to encourage the engagement of students as well as academic success. Such services could include:

- i. Coaching of school leadership in the development, implementation, and evaluation of attendance improvement and dropout prevention strategies, child abuse prevention and intervention planning, substance abuse and prevention efforts, and supports for Students in Temporary Housing
- ii. Assisting schools in handling the array of problems and crises they may face throughout the year including who would be responsible for providing this assistance.
- iii. Assisting school-based Community Based Organization programs, mentorship and internship programs, or other programs designed to increase community participation in ensuring improved student and school performance.
- iv. Assisting schools in related compliance requirements.

Providers will not be responsible for assisting the NYCDOE with system-wide mandated youth development administration services (incl. administration for Students in Temporary Housing, child abuse prevention and intervention), student health services (incl. nursing and physician services, occupational and physical therapy, compliance with requirements for immunization mandates, and mandatory vision testing services), or crisis intervention services (e.g. teams for direct service counseling)

#### 4. Organizational/staff development

Providers should specify how they will assist principals in attracting, developing, and retaining high quality staff, capable of supporting improved student achievement:

Professional development support:

- i. The provider shall assist the school in fulfilling its responsibilities in the development, implementation, and evaluation of school-based professional development aimed at improving student outcomes.
- ii. The provider may offer resources and/or coordination to ensure high quality professional development.
- iii. The provider shall coach school leadership in the implementation and evaluation of any city/state mandated professional development (e.g. new teacher mentoring)

Providers will not be responsible for assisting the NYCDOE with system-wide leadership and staff induction and training services (e.g. Leadership Academy, Teaching Fellows)

Faculty and staff recruitment support:

- i. The provider shall coach and assist school leadership in the recruitment of teachers, administrators, and other school personnel.
- ii. The provider shall assist the principal in determining appropriate staffing levels and staff responsibilities, consistent with all school obligations including union contracts, and shall assist and coach school leaders in staff development in a manner consistent with all relevant legal and contractual requirements.

Providers will not be responsible for assisting the NYCDOE with employee certification, HR strategy/planning, labor relations, or disciplinary procedures for any NYCDOE employee.

The NYCDOE and NYCDOE staff, including school principals, shall have final authority to hire teachers, administrators and other school personnel. The NYCDOE will have final authority for principal selection and removal and staff discipline.

#### 5. Additional support services

Providers should describe additional support services that will be offered to schools in order to improve school operation and student performance, including the systems, resources, and techniques of support to the school.

In performing the above support services, the provider may assist schools in coordinating the use of any relevant existing NYCDOE contracts with external service providers.

- 3.2** In addition to those functions stated above, providers will not be responsible for assisting the NYCDOE with the following:

#### Central Administration: delivered through a combination of NYCDOE offices

1. Departmental budgeting and resource allocations (e.g., accounting and financial management, school financial allocations, revenue operations)
2. Legal and audit services
3. Investigations
4. Data collection and reporting

5. Monitoring compliance with legal requirements (including court orders as well as statutory/regulatory requirements)

School Operations: delivered through a combination of NYCDOE offices.

6. School level budget, procurement, payroll operations, and HR functions
7. School facilities and construction functions
8. School food and nutrition functions
9. Student transportation functions
10. Information technology functions, including school technology support
11. School safety/security functions (including school safety functions performed by the NYPD on behalf of the NYCDOE) and student discipline/suspensions (incl. system-wide suspension hearing services, mobile metal detectors, and Impact school support)
12. Student enrollment functions and policy (e.g. high school admissions process and No Child Left Behind transfers)

Community Support Services: delivered through a combination of NYCDOE offices

13. Parent engagement (although external providers are encouraged to provide additional support for robust parent engagement)
14. Translation/interpretation functions
15. External communications functions

These services will be delivered to all schools in the same manner and degree, whether the schools select a support organization named as a provider in this RFP or an internal provider (Empowerment Support Organization, Learning Support Organization).

- 3.3 Each school in the system will sign a performance agreement that will reflect minimum accountability standards similar to those in the NYCDOE Empowerment School performance agreement (a copy of which is attached hereto as [Exhibit 2]). For schools receiving services under a contract pursuant to this RFP, the principal shall act as the site director ensuring that provider services are aligned with accountability standards as articulated in the Department's Accountability systems and process. Schools will receive Quality Reviews and Progress Reports which will include a letter grade based on the NYCDOE

Accountability Office's determination of student performance, progress, and school environment. Provider performance will be reviewed and evaluated by the NYCDOE office responsible for the oversight of this initiative. The criteria used to evaluate provider performance shall include, among others, (i) the Progress Report and Quality Review ratings received by schools receiving support and (ii) evaluation of the individual provider by schools receiving support from that provider pursuant to this RFP.

## **SECTION 4 PROPOSAL REQUIREMENTS**

Your proposal must address all of the services enumerated under Scope of Services listed in Section 3 above. Using the separate proposal and pricing forms (Appendices E1, E2, F, and G; see Section 6.2 and Section 6.3 below), organize your proposal in the following four sections:

### **4.1 Program Plan/Narrative**

The Program Plan must be a clear, detailed, rational and concise description of how you will provide the services described in each of the five service categories listed in the Scope of Services in Section 3, above. Your proposal should show a clear understanding of the needs noted in this RFP and demonstrate how your plan will meet the goals and objectives of this particular RFP. Proposals must contain a work plan for year-round coverage, indicating approximate dates and frequency of services (including services that are required both in and around the school day) with an emphasis on the first ninety days of support provision. Proposals should also contain a narrative description of your support vision (including the general school culture and strategies for student achievement that you hope to see in schools in which you provide support).

### **4.2 Organizational Capacity**

In this section, you will show evidence of adequate human, organizational, technical, and professional resources and abilities to meet the needs of this RFP.

**4.2.1** An organizational chart for the overall organization responding to the RFP, showing the specific titles and, employees of the organization slated to work on this project.

**4.2.2** Resumes of key personnel and background, qualifications, and experience that typifies personnel who would be assigned to provide support to particular schools if a contract is awarded.

The provider shall fully comply with all NYCDOE clearances, including fingerprinting clearance and child abuse registry clearance, at the provider's expense.

You will also list any limiting criteria which are part of your service model, including, but not limited to, the following:

- 4.2.3** Limiting criteria. We expect all providers will work with a minimum of approximately 10 schools. Please indicate your preferred number of schools to which you would provide support as well as the minimum and maximum number of schools you can reasonably serve in any particular year (we will assume a minimum of 10 schools and no maximum if you do not explicitly answer); any support prerequisites (e.g. adoption of specific curricula, specific periodic assessment, specific partnership model) that schools should be willing to commit to (we will assume none if you do not explicitly answer); and any other restrictions on the nature of schools you can serve (e.g. school grade level, school service model). You must also provide a rationale for any limiting criteria you specify, and such rationale must directly relate to the purpose of improving student performance.

#### **4.3 Demonstrated Effectiveness**

Include a description of prior experience in the provision of these or similar services. In addition to the information submitted to the Minimum Qualifications required in Section 2 above, include the following:

- 4.3.1** Detail your background and experience in providing these or similar services. Detail the methods used and results obtained by those methods. Provide objective data, if available. NYCDOE reserves the right to verify any experience presented.
- 4.3.2** Prior experience providing services in or to public schools on a paid or unpaid basis with a particular emphasis in New York City and/or other large urban districts.
- 4.3.3** Submit three (3) letters of references from organizations that directly engaged your services. Each reference must state the dates, location, and description of the services.

#### **4.4 Pricing/Charges**

Please complete the Pricing Template and Cost Breakdown Worksheet included as separate Excel files. The Pricing Template (Appendix F) asks you to show price variation for supporting schools with varying student population size and scale efficiencies achieved through adding additional schools. Differentiated pricing should be provided for each grade level (e.g., K-5, K-8, 6-8, 6-12 and 9-12) that you are proposing to provide support to if grade level differences affect your pricing structure. The Cost Breakdown Worksheet (Appendix G), which breaks proposed pricing into component costs, should be completed based on a portfolio of ten (10) schools, assuming an average student population of 700 per school and citywide averages of special needs populations (approximately 11% Special Education and 13.6% English Language Learners). Proposers must submit a five (5) year budget projection for the services to be provided with a cost escalator for the outlying optional renewal years. The Department expects to ear-mark funds for the support of schools. To the extent that the price charged by providers does not allocate all of these resources, the Department expects to allocate the remaining funds directly to schools, for their own use.

As a pricing guide, you may refer to Exhibit [3] which provides a sample Empowerment School Network Support Team per-school pricing structure as well as the average per-school funding devolution to Empowerment School in the 2006-2007 school year.

*Please note: In addition to Appendix F, you may also include additional pricing information if you need to further clarify your pricing structure.*

## **SECTION 5 PROPOSAL EVALUATION PROCESS**

### **5.1 EVALUATION PROCEDURE**

All proposals received by NYCDOE will be reviewed to determine if the proposal meets all of the submission and Minimum Qualifications requirements prescribed in this Request for Proposals. If a proposal meets these requirements, then an Evaluation Committee will evaluate and rate all such proposals, applying the evaluation criteria prescribed below. Awards will be made by the NYCDOE based on the evaluation of these criteria and your proposed price for support provision. NYCDOE reserves the right to conduct site visits to verify facility

or other information contained in a proposal and may require you to make a demonstration of your services and/or oral and additional written presentations in support of your proposal. Although discussions may be conducted with proposers submitting acceptable proposals, the NYCDOE reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best programmatic and price terms.

## **5.2 EVALUATION CRITERIA**

The scoring table below will be used to evaluate the quality of each submitted proposal. The closer your proposal achieves the Desired Characteristics, the more likely that it will receive the Maximum Points.

<b><u>Response Category</u></b>	<b><u>Desired Characteristics</u></b>	<b><u>Maximum Points</u></b>
Program Plan	Program Plan provides detailed description of the scope of services that includes outcome goals and implementation details for each service.	<b>40 Points</b>
Organizational Capacity	Evidence that the organization's human, organizational, technical, and professional resources can support the proposed scope of services.	<b>35 Points</b>
Demonstrated Effectiveness	Evidence of prior successful experience that is detailed and directly related to the proposed scope of services.	<b>25 Points</b>
	<b>Total Maximum Points</b>	<b>100 Points</b>

## **SECTION 6 PROPOSAL PACKAGE FORMAT**

Each Proposal must be submitted in Microsoft Word '98 or a later version. Additionally, this RFP has four (4) forms for you to use in your proposal – Appendices E1, E2, F, and G – that **must** be downloaded from our website:

<http://schools.nyc.gov/Offices/DCP/Vendor/RequestsforProposals/Default.htm>

These forms are in Excel and Microsoft Word. Qualified and interested vendors are invited to respond, provided they use these forms to submit responses to the NYCDOE no later than 11:30 A.M. on February 26th, 2007.

**6.1 Proposal Form Instructions**

Proposers **must** prepare their proposals in the format and sequence supplied below. Failure to comply with this stipulation could be the basis for proposal disqualification. Supplemental information about the proposer's services may be included as an addendum to the proposal but not in place of the response requirements listed below.

**6.2 Proposal Form (Appendix E1)**

Please review each of the following sections and subsections and respond accordingly:

1. Organization Information
2. Minimum Qualifications
3. References
4. Organizational Capacity
5. Demonstrated Effectiveness
6. Exceptions and Deviations Form
7. Signature Page
8. Other Supplemental Information (Optional, but not encouraged).

**6.3 Program Plan-Narrative Form (Appendix E2)**

As required in Section 4.1 of the RFP, on Appendix E2, describe in detail your program and methods to accomplish the services proposed. Include a work plan indicating approximate dates and frequency of services. **Please limit this to twenty pages.**

**6.4 Pricing Template and Cost Breakdown Worksheet (Appendices F and G)**

Pricing information **must** be entered in the Pricing Template and Cost Breakdown Worksheet included as separate files (Appendices F and G).

Proposals must include a cover letter, Table of Contents, and page numbers. There is no specific limit on the number of pages applications may contain but **please be concise.**

Submit one (1) written original copy, with original signatures, 7 paper photocopies, and one electronic copy using Microsoft Word '98 or a later version on one CD in one computer folder. YOU MAY HAVE TO CONVERT SOME OF YOUR RESUMES OR LETTERS OF REFERENCE TO THE MICROSOFT WORD FORMAT. Please note: the hard copy of the RFP must contain the proposal form as well as the pricing form.

Proposals may not include audio/video demonstrations on tapes, diskettes, CDs, PowerPoint files, etc., or samples of materials unless otherwise specified.

Applicants are also required to submit current Vendor Information Exchange System (Vendex) forms with the proposal. These forms are located at:

<http://schools.nyc.gov/Offices/DCP/MostPopularClicks/Vendex+Forms.htm>

**Please note: notwithstanding the instruction in the second bullet on page 3 of the Vendor's Guide to Vendex, you must include original Vendex forms WITH YOUR PROPOSAL.**

Please **DO NOT SUBMIT MULTIPLE COPIES** of the Vendex forms with your proposals. We only require **ONE ORIGINAL set**.

- 6.5** If submitted separately, the envelope containing the original written and diskette proposal should be labeled "Original Proposal" and the envelope containing the photocopies should be labeled "Duplicate Proposals." Each envelope submitted in response to the RFP **must** be addressed as follows:

**FROM: [Proposer Name/Address]**  
**TO: New York City Department of Education**  
**Division of Contracts and Purchasing**  
**65 Court Street**  
**Brooklyn NY 11201**  
**RFP # R0060**

- 6.6** You must include in your proposal a list of all NYCDOE contracts for similar services held by your organization within the last 5 years, specifying the following information:

- Dates and periods during which the contract was in effect;

- A short description of the services provided

## **SECTION 7 REQUEST FOR PROPOSALS TIMETABLE AND GENERAL INFORMATION**

### **7.1 REQUEST FOR PROPOSALS (RFP) TIMETABLE**

**PROPOSALS ARE DUE NO LATER THAN**

**DATE: February 26, 2007**

**TIME: 11:30 A.M.**

**AT THE LOCATION LISTED IN SECTION 6.5 ABOVE.**

**PROPOSALS RECEIVED AFTER THE SPECIFIED DATE AND TIME WILL NOT BE CONSIDERED.**

### **7.2 Requests for Clarification and Addenda**

Any inquiry regarding this solicitation must be made in writing, with the exception being oral inquiries that are addressed at the pre-proposal conference (described in Section 7.4). No telephone calls will be accepted regarding this RFP. All written inquiries must be e-mailed to the following authorized e-mail address, with the RFP reference number included in the subject field:

[InstructionalServices@schools.nyc.gov](mailto:InstructionalServices@schools.nyc.gov)

The deadline for questions on this RFP is February 9, 2007.

Proposers should not rely on any representations, statements, or clarifications not made in either this RFP, a formal addendum, or at the pre-proposal conference. Notwithstanding the foregoing, if the NYCDOE issues an addendum with a digest of the inquiries made and answers given at the pre-proposal conference, proposers shall rely on the information contained in such addendum rather than those given orally at the conference.

### **7.3 Pre-Proposal Conference**

A pre-proposal conference, at which vendors will have the opportunity to ask questions related to this RFP, will be held on

February 7<sup>th</sup>, 2007 at 2:00pm in the St. Francis College auditorium, located at 182 Remsen Street, between Court Street and Clinton Street in Brooklyn, New York. Specific questions concerning this RFP should be submitted in writing to the authorized contact person identified in Section 7.3 prior to the pre-proposal conference. Written questions should reference the RFP by page number and paragraph. If possible, these questions will be answered at the pre-proposal conference. Additional questions may be submitted orally at the conference.

**7.4 Incurring Costs**

The NYCDOE shall not be held liable for any pre-contract activity or costs incurred by proposers in the preparation of their proposals, or during any negotiations on proposed contracts, or for any work performed or materials provided in connection therewith.

**7.5 Oral Presentations/Demonstrations**

The NYCDOE may require proposers to give oral presentations after the final due date for proposals regarding any aspect of their proposals. At such oral presentation, proposers may be required to demonstrate or exhibit aspects relating to their proposal as requested by the NYCDOE.

**7.6 Negotiations**

The NYCDOE reserves the right to: (i) reject all proposals submitted; (ii) accept any proposal or alternate as submitted without negotiations; (iii) accept or negotiate with all proposals submitted which fall within a competitive range; (iv) require revisions to, corrections of, or other changes to any proposal submitted as a condition to its being given any further consideration; (v) select for negotiations only the overall best proposal or alternate submitted, as determined by the NYCDOE; (vi) negotiate with one or more proposers in any manner it deems fit (such negotiations being concurrent or sequential as the NYCDOE determines); (vii) following the conclusion of any such negotiations, solicit Best and Final Offers (BAFO) utilizing an appropriate procedure; (viii) re-open negotiations after the BAFO procedure, if it is in the NYCDOE's best interest to do so. No proposer shall have any rights against the NYCDOE arising at any stage of the solicitation from any negotiations that take place, or from the fact that the NYCDOE does not select a proposer for negotiations.

### 7.7 Withdrawal Of Proposals

After the opening of proposals, a request by a proposer to 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:

Request to withdraw proposal must be received in writing providing reasons for the request. This request is to be sent to the Administrator, Division of Contracts and Purchasing, within three (3) business days following the date and time set for the opening of proposals.

Any request for a Withdrawal of proposal within three (3) business days must be accompanied by a certified check made payable to The New York City Department of Education, Administrator of Business Affairs, to defray the cost of the processing. Such checks shall be in the amount of five hundred dollars (\$500) for bids of fifty thousand dollars (\$50,000) or greater. Where the bid is less than fifty thousand dollars (\$50,000) a two hundred fifty dollar (\$250) check is required. Such fees are non-refundable.

Following the three (3) business days after the proposal opening, a proposer may not withdraw its proposal before the expiration of ninety (90) calendar days from the date of proposal opening. A proposer may withdraw its proposal after that date only if it states such intent in writing prior to the mailing by NYCDOE of a Purchase Order, Notice of Award, or Acceptance of Bids.

The Administrator for Contract Management will make the determination with respect to any 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.

### 7.8 Terms and Conditions

All contracts resulting from this RFP shall be subject to the attached General Terms and Conditions (Appendix B: Department of Education, Terms and Conditions) in substantially the form they are attached.

**7.9 Contract Award**

NYCDOE reserves the right to award a contract(s) to other than the proposer(s) offering the lowest overall cost. The contract(s) resulting from this solicitation shall be awarded to the qualified proposer(s) whose proposal(s) NYCDOE has determined to be the most advantageous, taking into consideration the price and based upon the evaluation criteria set forth in the Request for Proposals (RFP). All contracts resulting from this RFP shall be signed by the proposer(s) within a reasonable time upon receipt, which period shall not exceed 30 days. Thereafter, the proposer(s) is (are) deemed delinquent and, at the NYCDOE's option, the contract(s) may be voided.

Contract award(s) shall be subject to the following conditions, where applicable. They are not required to be part of your proposal submission.

- 7.10** Completion and submission of an appropriate Office of Equal Opportunity form (e.g., Workforce profile or Company's Equal Opportunities Work plan; does **not** apply to M/WBE certification (See Checklist-Section 10, second Bullet)).

**7.10.1** Completion and submission of the Affirmation Sheet.

**7.10.2** Submission of an appropriate Certificate of Insurance.

**7.11 Termination of Contract**

Any contract(s) resulting from this RFP may be terminated, in whole or in part, at any time upon thirty days written notice, by the Chancellor, and/or the Chancellor's designee. No claim for damages will be made by, or allowed to, the Contractor because of such termination.

**7.12 Important Note**

The onus is upon you to offer competitive pricing and to keep exceptions to our standard terms and conditions to a minimum. We would prefer that you accept our Terms and Conditions without ANY exceptions. However, if there is anything that you feel you must take exception to, please indicate that in your proposal. We will negotiate commercial agreements with you and dispose of legal issues, insurance requirements, and exceptions to Terms & Conditions if, and only if, your proposals are considered competitive.

**7.13 Prohibition of Communication During RFP Evaluation Period**

After the submission of proposals and continuing until a contract has been awarded, all NYCDOE personnel involved in the project will be specifically directed against holding any meetings, conferences or technical discussions with any proposer regarding this RFP, except as provided in the RFP. Proposers shall not initiate communication in any manner with DOE personnel regarding this RFP or the proposals during this period of time, unless authorized, in advance, by the selection committee. Failure to comply with this requirement will automatically terminate further consideration of that organization's proposal.

**SECTION 8 CONTRACT TERM**

The contract(s) resulting from this RFP will be for a term of five (5) years with an option to renew for an additional period of up to five (5) years.

**SECTION 9 TYPE OF CONTRACT**

This RFP may result in the award of one or more contract(s).

**SECTION 10 PROPOSER CHECKLIST**

Please ensure that you have received each of the following documents for your response. The attachments include:

- Request for Proposals
- Proposal Form (Appendix E1, Microsoft Word File)
- Program Plan-Narrative (Appendix E2, Microsoft Word File)
- Pricing Template (Appendix F, Excel File)
- Cost Breakdown Worksheet (Appendix G, Excel File)

Also please be sure to:

- Review the entire Request for Proposals and ensure that you understand the scope of the questions asked and the

role of each of the attached forms. Please review carefully the Scope of Services for this RFP before completing the response sections.

- View the Terms & Conditions (Appendix B) in this document. Some of the Terms & Conditions may have changed since the last RFP.
- Attend the Pre-Proposal Conference.





**APPENDIX A2****INSURANCE**

The Contractor **shall** maintain during the period(s) of this contract, inclusive of guarantee periods when applicable, insurance(s) covering the personnel employed by the contractor, equipment (vehicles) used, public servants, and property of the Department of Education while the supplies, equipment, goods, products, etc. called for herein are being delivered or while the services/work outlined herein is being performed.

If a proposal is selected for potential contract negotiations, the proposer will be required to submit certification(s) from acceptable insurers, licensed by the State of New York, or any other licensing authority thereon to the effect that said insurers, will furnish to the proposer the insurance coverage listed. In addition, certifications submitted must name the New York City Department of Education and the City of New York as additionally insured. Failure by the proposer to furnish the above certification(s) may result in rejection of the proposal.

The most common form used to transmit this information is entitled ACORD Certificate of Insurance (form ACORD 25-S (7/90))

The policies mentioned herein shall insure the New York City Department of Education and the City of New York against claims outlined in the coverage's mentioned herein in the same amounts as are required in specifications for the Contractor or Subcontractor when applicable. Such coverage may be by separate policies or by endorsement to this effect on existing policies.

The policies mentioned herein, insuring the New York City Department of Education and the City of New York against claims arising out of negligence of the Contractor or Subcontractor when applicable, shall contain, by rider attached to such policies, the following provisions:

- a) Notice under this policy by the Insurance Company should be addressed to the Director of Purchase, Office of Purchasing Management, 65 Court Street 12<sup>th</sup> Floor Brooklyn NY 11201.
- b) Notice of accident should be given by the insured to Insurance Company within sixty (60) days after notice to the said Director of Purchase of such accidents.
- c) Notice of claim against the insured shall be given to the Insurance Company within sixty (60) days after such claims shall be filed with said Director of Purchase.
- d) The policy shall not be canceled, terminated, modified or changed by the Insurance Company unless thirty (30) days prior written notice is sent to the insured by registered mail and addressed to the Director of Purchase, Purchasing Management nor shall it be canceled, terminated, modified or changed by the Contractor securing such policy without the prior consent by the Department of Education of the City of New York.
- e) The policy shall not be invalidated by reason of any violation of any of the terms of any policy issued by the Insurance Company to the Contractor.

If a proposal is selected for potential contract negotiation, the proposer will be required to submit, the following insurance policies. Failure to do so may result in rejection of your proposal. Delivery of such insurance policies to the Department of Education shall be a condition precedent to the right of the Contractor to demand any payments hereunder.

In the event contract is to be extended, Contractor must submit proof of continuing compliance at least thirty (30) days prior to the ensuing contract period.

### **WORKERS' COMPENSATION INSURANCE**

If this contract be of such character that the employees engaged thereon are required to be insured by the provisions of Chapter 6515 of the laws of 1922 known as the Workmen's Compensation Law, and with act amendatory thereof, the same shall be void and of no effect unless the person, firm or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of this contract, such employees in compliance with the provisions of said law.

Insurance must comply with Workmen's Compensation Law. The Contractor shall not begin work at, about, or upon, the property of the New York City Department of Education until filing with the Director of Purchase, Purchasing Management a certificate showing compliance with the provisions of said law. Such insurance shall be kept during the life of this contract (inclusive of guarantee periods when applicable) and until the completion of said deliveries or services-work to be performed is accepted by the New York City Department of Education contractor shall only engage subcontractors when contract permits who comply with the workman's compensation.

### **COMPREHENSIVE GENERAL LIABILITY INSURANCE (INCLUDING PRODUCT (S) LIABILITY INSURANCE)**

Shall insure the vendor and the vendor's agents, the New York City Department of Education and the City of New York during the performance of work under this contract against all present and future claims for bodily injury, sickness, disease, death, and property damage as may arise because of any services/work performed or goods provided by the vendor or by anyone employed by the vendor, either directly or indirectly.

The limit of liability under this Comprehensive General Liability Insurance coverage (including Products Liability Insurance) for bodily injury, sickness, disease, or death shall be at least **\$2,000,000** per occurrence.

The limit of liability required for property damage shall be at least **\$100,000** for one claimant in any one occurrence but not more than **\$200,000** for two or more claimants in any one occurrence. Such damages shall include all injury to, or destruction of, property of such claimant as well as the loss of use occasioned by the occurrence.

### **MOTOR VEHICLE LIABILITY INSURANCE**

Shall insure the vendor, the vendor's agents, the New York City Department of Education and the City of New York during the performance of work under this contract against all present and future claims for bodily injury, sickness, disease, death and property damages which may arise because of a motor vehicle accident.

The limit of liability shall be at least **\$1,000,000** for all injuries sustained in any one occurrence.

The limit of liability required for property damage shall be at least **\$100,000** for one claimant and at least **\$200,000** for two or more claimants in any one accident. Such damages shall include all injury to, or destruction of, property of such claimant as well as the loss of use occasioned by the accident.

### **PROPERTY LOSS INSURANCE**

The limit of liability shall be at least **\$500,000** per occurrence protecting the supplies, equipment and property, etc. of the New York City Department of Education against "All Risks" of loss, which include, but are not limited to, fire, lightning, windstorm, hail, riot, civil commotion, vandalism, malicious mischief, burglary, theft, floods, earthquakes, hurricanes, tornadoes and other perils including mysterious disappearance while supplies, etc. are in the possession, control or responsibility of the contractor, sub-contractor or anyone directly or indirectly employed by either of them.

In the event there is a loss incurred as a result of any of the above, reimbursement for claims submitted shall be on a dollar for dollar basis for the cost incurred by the Department for either the loss of services, repair, restoration or replacement, whichever is applicable. This coverage may be a "Department Form" policy covering any/all possible contingencies.

### **SUB-CONTRACTORS' INSURANCE**

Should the awarded Contractor retain a Subcontractor to perform any of the services mentioned herein, it is the Contractor's responsibility to insure that Subcontractor maintains the same types of insurance coverage in accordance with the requirements and amounts indicated herein.

### **SAVE HARMLESS CLAUSE**

Contractor hereby agrees to indemnify and hold the New York City Department of Education and the City of New York harmless from all claims, damages, judgment, expenses, attorneys fees and compensation whether in contract or tort arising out of personal injury, including death, or property damage sustained or alleged to have been sustained in whole or in part by any or all persons whatsoever as a result of or arising out of any act or omission of the Contractor, its agents or employees, or caused or resulting from any deleterious substance in any of the products supplied or while the equipment, supplies, etc. are being delivered or the service-work is being performed under this contract, whichever instance is applicable.

*This is a sample - an original certificate document should be obtained from the proposers insurance company.*

CUSTOMER * CERTIFICATE OF INSURANCE	ISSUE DATE:
PRODUCER	THIS CERTIFICATE IS ISSUED AS A
MATTER OF	INFORMATION ONLY AND CONFERS NO
RIGHTS UPON	THE CERTIFICATE HOLDER THIS
CERTIFICATE DOES	NOT AMEND, EXTEND OR ALTER THE
COVERAGE	AFFORDED BY THE POLICIES BELOW,

COMPANIES AFFORDING COVERAGE:

COMPANY LETTER B  
INSURED

COMPANY LETTER A

COMPANY LETTER C

COMPANY LETTER E

COVERAGE'S:  
THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

CO	LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. DATE	POLICY EXP. DATE
		GENERAL LIABILITY			GENERAL
		AGGREGATE \$			
		A ( ) COMMERCIAL GENERAL LIABILITY			PRODUCTS-
		COMP/OP AGG, \$			PERSONAL
		( ) CLAIMS MADE ( ) OCCUR,	REQUIRED		EACH
		& ADV, INJURY \$			FIRE
		( ) OWNER'S & CONTRACTOR'S PROT.			MED.
		OCCURRENCE \$			
		( ) B.F. VENDORS			
		DAMAGE (ANY ONE FIRE) \$			
		( )			
		EXPENSE (ANY ONE PERS) \$			
		EXCESS LIABILITY			EACH
		( ) UMBRELLA FORM			
		OCCURRENCE \$			
		( ) OTHER THAN UMBRELLA FORM			
		AGGREGATE \$			
B		WORKER'S COMPENSATION			( )
		STATUTORY LIMITS			
		AND	REQUIRED		EACH
		ACCIDENT \$			
		EMPLOYER'S LIABILITY			DISEASE-
		POLICY LIMIT \$			DISEASE-
		EACH EMPLOYEE \$			
		OTHER			

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

NEW YORK CITY BOARD OF EDUCATION AND THE CITY OF NEW YORK ARE ADDITIONAL INSURED  
CERTIFICATE HOLDER CANCELLATION

NEW YORK CITY BOARD OF EDUCATION SHOULD ANY OF THE ABOVE DESCRIBED  
POLICIES BE CANCELED BEFORE THE EXPIRATION DATE  
THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL  
**30 DAYS** WRITTEN NOTICE TO THE CERTIFICATE  
HOLDER NAMED TO THE

LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON  
REPRESENTATIVES, THE COMPANY, ITS AGENTS OR

AUTHORIZED REPRESENTATIVE:

## APPENDIX A3

**PRICE CERTIFICATION CLAUSE (REVISED 11/13/78)**

The proposer certifies that the prices, warranties, conditions, benefits and terms quoted herein are at least equal or more favorable to the Department of Education of the City School District of the City of New York than the prices, warranties, conditions, benefits and terms currently quoted by the proposer to any customers for the same or a substantially similar quantity and type of item(s) or services as described herein. This certification shall not apply to prices, warranties, conditions, benefits and terms under contracts in effect between the proposer and other customers at the date of submission of the proposal within, except as provided herein.

The successful proposer (hereinafter called the "Contractor") further certifies that during the period between the proposal submission date and the completion of the term of this contract, should subcontractor offer prices, warranties, conditions, benefits, and terms more favorable than those quoted herein, or provide changed prices, warranties, conditions, benefits and terms more favorable than those quoted herein under a contract in effect at the proposal submission date with any customer, for the same or a substantially similar quantity and type of item(s) or services, then the contractor shall immediately thereafter notify the New York City Department of Education, Purchasing Management. Regardless of whether such notice is sent by the contractor or received by the New York City Department of Education, this contract shall be deemed amended retroactively to the effective date of more favorable treatment, to provide the more favorable prices, warranties, conditions, benefits, and terms. The Department of Education shall have the right and option to decline any such amendment.

If the contractor is of the opinion that an apparently more favorable price, warranty, benefit, condition, and term quoted, offered or provided to a customer is not more favorable treatment, the contractor shall immediately notify the Director of Purchase, Purchasing Management, of the Department of Education in writing setting forth in detail the reasons why the contractor believes the apparently more favorable treatment is not in fact more favorable treatment. The Director of Purchase, Purchasing Management, after consideration of the written explanation may, in their sole discretion, decline to accept the explanation and thereupon the terms will be at least equal to or more favorable to the Department of Education of the City of New York than the prices, warranties, conditions, benefits and terms offered by the contractor to any customer for the same or substantially similar quantity and type of item(s) and/or services as of the effective date of the revision.

The contractor hereby authorizes the inspection, review and copying of contracts and documents that pertain or relate to the performance of this clause of the contract. The contractor shall be obligated to keep the contracts and documents referred to in the above paragraph during the effective period(s) of this contract and for a period of three years after the final payment of this contract.

**APPENDIX A4 – REQUIREMENTS FOR WEB-BASED APPLICATIONS.**

The following only applies to proposals for web based applications. Any web-based application components should satisfy the following NYCDOE requirements:

<p><b>Scope of Services</b></p> <ul style="list-style-type: none"> <li>• Develop Web in accordance with NYCDOE existing user equipment and software standards</li> <li>• .NET Framework (version 1.1 SP2)</li> <li>• SQL Server 2000 Databases</li> <li>• Microsoft Content Management Server (if applicable)</li> <li>• SIF compliant (if applicable)</li> <li>• Provide reasonable response time to end-users (must be under 10 seconds based on a 56K modem bandwidth connection)</li> <li>• Crystal Reports should be the standard for reporting</li> </ul>
<p><b>Security Levels</b></p> <ul style="list-style-type: none"> <li>• Encryption: SSL</li> <li>• Adhere to CISAFE Standards</li> <li>• .NET security model</li> <li>• AD / Windows integrated authentication for internal applications</li> <li>• Authentication: Password Protection</li> <li>• Server Verification: VeriSign</li> <li>• Anonymous User Participation: ie: TrustE</li> </ul>
<p><b>Server/Storage Requirements</b></p> <ul style="list-style-type: none"> <li>• What is the estimated storage?</li> <li>• What is the storage growth over two years?</li> <li>• What are the specifications for the server?</li> <li>• What are the network/bandwidth requirements?</li> <li>• What archival requirements are there if any?</li> </ul>
<p><b>Browser</b></p> <ul style="list-style-type: none"> <li>• Websites and applications should be designed to function properly in HTML Transitional 4.0-compliant browsers, such as Microsoft Internet Explorer 5.0 and above, the Mozilla family including Firefox 1.0 and above and Netscape 7.0 and above.</li> </ul>
<p><b>Connections Speeds</b></p> <ul style="list-style-type: none"> <li>• T3 lines for Offices</li> <li>• T1 lines for schools</li> <li>• All applications must support 56k modem connections. - If expected to be used from off-site locations (home, etc.).</li> </ul>
<p><b>Downloadable Modules</b></p>

- Downloads are only allowed in training Centers.
- Schools do not support downloads.

**Minimum Hardware & Software Requirements**

- WinTel: Windows Intel 486 machines or higher with 32M RAM
- Apple: Apple MACs processors
- Screen resolutions: 600x800; minimum 256 colors use HEX code not RGB.
- The system should not have any home or custom-built hardware. Our OS standards are Windows.
- If vendor supplies new hardware is expected, it should be "name-brand." hardware.
- Downloads: Flash, Java Applets,

Not Supported

- Flash only websites
- Streaming media applications
- External Applications that require AD authentication
- Client side downloads

**APPENDIX A5****MINORITY AND WOMEN OWNED BUSINESS ENTITIES PARTICIPATION**

The New York City Department of Education (DOE) strongly encourages the substantive participation of minority and women owned business enterprises (M/WBE) in this engagement. The proposal will be deemed to be M/WBE participation if the Prime contractor is identified by a governmental agency as a certified M/WBE. No rating points are assigned for M/WBE status.

We strongly advocate participation of Prime contractors who demonstrate a clear and strong commitment to, and support of equal employment opportunity and employee civil rights, as well as, Prime or subcontractors showing a high level of commitment to the principles incorporated in Title VI and Title VII of the Civil Rights Act of 1964, and with all applicable Federal, State and City Laws and for clear demonstration of implementation thereof.

Demonstration of commitment and implementation may consist of, but not be limited to, the following, as documented by supporting data and materials, to be provided by the proposed with its response to this RFP:

- **Submit a copy of your M/WBE certification letter from a governmental agency.**
- **A record of hiring, placement, training and promotional practices which permit access to all levels within the firm's organization by women, minority, and disabled and other employee groups covered by the Civil Rights Act of 1964.**
- **Policies, initiatives and programs that discourage discrimination against individuals on the basis of age, color, sex, national origin, citizen status, religion, sexual orientation, pregnancy or pregnancy-related conditions, and/or promotes the welfare of people with disabilities, including mentally and physically disabled employees and disabled veterans.**

Recognition of the efforts above <sup>33</sup>by government agencies nationally

**recognized civil rights organizations, or other appropriate groups.**

## APPENDIX B

**TERMS AND CONDITIONS**1. Definitions

- A. Words used in this Agreement shall have their ordinary meanings in the English language, except that scientific, technical, specialized or foreign words shall be given their appropriate scientific, specialized or foreign meanings, and definitions specifically provided elsewhere in the Agreement shall apply.
- B. The following words, names and titles shall have the following meanings:
- (1) "The Board" means the Board of Education of the City School District of the City of New York.
  - (2) "The City" means the City of New York.
  - (3) "Contract Budget Detail" means the document attached to and incorporated into the Agreement explaining and limiting how funds paid hereunder are to be expended by the Contractor.
  - (4) "The Comptroller" and "The Commissioner of Finance" mean the Comptroller and the Commissioner of Finance of the City, respectively.
  - (5) "The Chancellor" means the Chancellor of the Board.
  - (6) "Approved," "Required," "Directed," "Specified," "Designated" or "Deemed Necessary," unless otherwise expressed, mean approved, required, directed, specified, designated, or deemed necessary, as the case may be by the Chancellor or his designee.
  - (7) "Completion" means full and complete compliance with every requirement of the Agreement by the Contractor as certified by the Chancellor or his designee.
  - (8) "Final Payment" means (i) the payment or refund by the Board or City of any moneys that exhausts the amount of money made available under the Agreement or (ii) any payment marked "Final Payment."

2. Captions

The headings of this Agreement, the paragraphs, and subparagraphs of the Agreement, and of any attachments, are included solely for convenience and reference, and they shall not be used in any way to interpret this Agreement.

3. Conditions Precedent

This Agreement shall not become effective or binding upon the Board until:

(1) it shall have been approved as to legal sufficiency by the Board's Office of Legal Services; (2) it shall have been executed by the Chancellor; (3) it shall have been approved as to legal authority by the New York City Law Department; (4) it shall have been registered by the Comptroller; (5) it shall have been approved by the New York State Education Department, if applicable; and, (6) the Comptroller shall have issued a certificate indicating there remains unexpended and unapplied a balance of the appropriation or fund applicable hereto sufficient to pay the estimated expense of performing the Agreement as certified by the Board. A Requirement Agreement for an extended period will require an endorsement upon the Agreement from time to time as services and/or items and materials are ordered, of the sufficiency of the appropriation applicable towards the payment for said services and/or materials as and when ordered. (Rev. 4/16/01)

4. Compliance with Laws

In connection with the performance of this Agreement, the Contractor shall comply with all applicable laws, rules and regulations. The parties hereto agree that every provision of law required to be inserted herein be deemed a part hereof. It is further agreed that if any such provision is not inserted or is incorrectly inserted, through mistake or otherwise, this Agreement shall be deemed amended so as to comply strictly with the Law.

5. Unlawful Provisions Void

If this Agreement contains any unlawful provisions or portions thereof, they shall be deemed deleted from the Agreement and the remainder of the Agreement shall remain in full force and effect. If the deletion of such provision frustrates the purpose of this Agreement, either party may make application to the Chancellor's designee for relief. (Rev. 10/4/02)

6. Religious Activity Prohibited

There shall be no religious worship, instruction, proselytizing, or other religious activity in connection with the performance of this Agreement.

7. Political Activity Prohibited

No Board property provided to the Contractor hereunder for the purposes of this Agreement shall be used for any political activity or to further the election or defeat of any candidate for public office. As used herein the term "Board property" shall include, but not be limited to, supplies, work sites, funds advanced and services.

8. Publication and Publicity

The Contractor or anyone employed by the Contractor may not publish the results of its participation or findings in the performance of this Agreement

without the prior written approval of the Chancellor or his designee. All approved publications shall acknowledge that the program is supported by funds from the Board. Five true copies of each approved publication shall be furnished to the Board without charge. (8/29/88)

9. Copyright

If the Contractor or anyone employed by the Contractor shall write, record or otherwise produce copyrightable material within the scope or in furtherance of this Agreement, the Board shall be considered the author for purposes of copyright, renewal of copyright, and termination of copyright and, unless expressly waived in a written instrument signed by the Chancellor or his designee, the owner of all of the rights comprised in the copyright. (6/88)

10. Patents

Any invention or discovery arising out of or developed in furtherance of this Agreement shall be promptly and fully reported to the Board. The Board shall have the exclusive right to apply for patent protection on such invention or discovery and to determine how the rights in said invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered.

11. Accounting for Property

If any property is acquired by the Contractor with funds provided by the Board under this Agreement, the property shall be deemed purchased by the Board for the use of the Contractor during the term of the Agreement shall be permanently embossed "Property of New York City Board of Education" and shall be returned to the Board, at the Contractor's expense, within thirty (30) days after the end of said term, unless the Contractor is otherwise notified in writing by the Chancellor or his designee. (6/21/88)

12. Non-Reimbursable Expenses

The following items may not be claimed as a direct or indirect cost of the Services provided under this Agreement:

- a. rental expense of apartments;
- b. interest on loans;
- c. penalties for delinquent filing of tax returns;
- d. political or charitable contributions;
- e. advertising and promotions;
- f. legal expenses;
- g. key-man life insurance premiums;
- h. federal, state and city income taxes, state and city franchise

taxes, and any costs for the preparation of such tax returns;

- i. expenses incurred in preparing for operations;
- j. cost of employee meals and lodging except when traveling outside the City and pursuant to the Contract Budget Detail of this Agreement;
- k. entertainment, gratuities, and any other items of a personal nature;
- l. long distance telephone calls unless directly related to the services provided under the terms of this Agreement;
- m. any expense not ordinary, necessary or reasonable in the performance of the Agreement.

13. Limitation on Overhead

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall be reimbursed for overhead costs equal to the lesser of either (1) the amount specified in the Contract Budget Detail of this Agreement or (2) the amount calculated by multiplying the total direct labor cost plus fringe benefits stated in the Contract Budget Detail of this Agreement by a fraction, the numerator of which shall be the total of all the Contractor's overhead costs during the term of this Agreement for all operations, and the denominator of which shall be the total of all of the Contractor's direct labor costs plus fringe benefits during the Term of this Agreement for all operations.

14. No Extra Compensation

The Contractor shall not seek, ask for, demand, sue for or recover, as extra compensation or otherwise, any sum for labor, materials or Services other than the compensation agreed upon and fixed.

15. Invoices and Payments

The Contractor shall furnish proof of performance with each invoice, and shall comply with all Board requirements concerning the manner in which invoices are to be submitted. The Contractor shall not be entitled to demand or receive full or partial payment, until each and every one of the provisions of this Agreement is complied with, and the Chancellor or his designee shall have given written certification to that effect. Nothing contained herein shall be construed to affect the right hereby reserved by the Board to reject the whole or any portion of the performance, should said certification be inconsistent with the terms of this Agreement, or otherwise erroneously given.

16. Cancellation of Grant Funding

If the goods or Services to be provided hereunder are to be paid for, in whole or in part, by means of grant funding received by the Board from federal, state, city or private sources, the obligation to pay the Contractor shall be subject to the continuing availability of said funding. The Board shall notify the Contractor within five (5) business days from the date the Board receives written notice of the cancellation of grant funding, in whole or in part, whereupon the Contractor may cease further performance of this Agreement to the extent said performance would not be supported by grant funding. However, the Board may, at its option, require completion of performance of this Agreement by the Contractor upon giving written assurance, signed by the Chancellor or his designee, within fifteen (15) business days of the date the Board receives written notice of such cancellation, that the completed performance of this Agreement shall be supported by other available funds.

17. No Estoppel

The Board, City, and their respective departments, divisions and offices, shall not be precluded or estopped by a statement or document issued by or on behalf of the Board or the City, from indicating the true value of Services performed and supplies furnished by the Contractor or by any other person pursuant to or as a result of this Agreement, or from indicating that any such return or certificate is untrue or incorrect in any particular, or that the Services performed and supplies furnished or any part thereof do not in fact conform to the provisions of the Agreement. Notwithstanding any such statement or document, or payment in accordance therewith, the Board and the City shall not be precluded or estopped from demanding and recovering from the Contractor such damages as may be sustained by reason of the Contractor's failure to comply with the provisions of this Agreement.

18. Acceptance of Final Payment

Receipt and negotiation by the Contractor, or by any person claiming under this Agreement, of the Final Payment hereunder, notwithstanding whether such payment be made pursuant to any judgment or order of any court, shall constitute a general release of the Board from any and all claims and liability for

anything done, furnished, or relating to the labor, materials, or services provided, or for any act of omission or commission of the Board or its agents and employees. Said release shall be effective against the Contractor and the Contractor's representatives, heirs, executors, administrators, successors, and assigns.

19. Claims - Limitation of Action

No action at law or equity shall be maintained by the Contractor, its successors or assigns, against the Board on any claim based upon or arising out of this Agreement, or out of anything done in connection with this Agreement, unless such action shall be commenced within six (6) months after the date of filing of the voucher for final payment hereunder or within six (6) months of the required completion date for the services performed hereunder, whichever is sooner. None of the provisions of Article 2 of the Civil Practice Law and Rules shall apply to any action against the Board arising out of this Agreement.

20. Notices

The Contractor's address stated on page 1 of this Agreement is hereby designated as the place where all notices, letters or other communications directed to the Contractor shall be served, mailed or delivered. Any notice, letter or other communication directed to the Contractor and delivered to such address, or sealed in a post-paid wrapper and deposited in any post office box regularly maintained by the United States Postal Service, shall be deemed sufficient service thereof upon the Contractor. Said address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Chancellor's designee. Nothing herein contained shall be deemed to preclude or render inoperative personal delivery of any notice, letter or other communication, written or oral, to the Contractor. Whenever it shall be necessary or required to prove the delivery of any notice, an affidavit describing such delivery shall be conclusive evidence of such delivery.

21. Amendments and Waivers

- A. This Agreement may be amended by a written instrument signed by an authorized officer for the Contractor, and by the Chancellor or his designee. No amendment materially affecting the substance hereof shall be effective unless authorized by the Chancellor, and a copy of said authorization is attached to the amendment and incorporated therein. (Rev. 11/27/02)
- B. No waiver by the Board of any term or condition hereof shall be effective unless in writing and signed by the Chancellor or his designee. Any waiver shall be specifically limited to its terms, and shall not be deemed applicable to subsequent like circumstances.
- C. Any purported oral amendment or waiver shall be void.

22. Suspension of Deliveries

The Chancellor or his designee, may postpone, delay, or suspend the delivery of the goods or Services, or any part thereof, without additional compensation to the Contractor. In such event, (A) the time established for performance by the Contractor of any duty during the Term of this Agreement may, at the Contractor's option, be extended for the number of days the Contractor was delayed by said suspension, postponement, or delay provided the Term is not thereby extended; however, (B) the Term may, at the Board's option, be extended for the number of days the Contractor was delayed by said suspension, postponement, or delay.

23. Cancellation

- A. If the Contractor violates any provision of this Agreement, the Chancellor or his designee may pursue any legal or equitable remedies available to the Board. In addition, the Chancellor or his designee may

seek to have the Contractor declared in default by a panel to be designated by the Chancellor. In the event that the Chancellor's designee shall determine the Contractor to be in default, the Board may cancel this Agreement and shall thereafter be relieved of all liability hereunder. Upon a finding of default in violation of this contract, the Contractor shall be deemed not responsible and disqualified from bidding for a period of four years, unless in such finding of default, a lesser penalty is imposed by reason of mitigating circumstances. (Rev. 10/4/02)

- B. In the event of breach of this Agreement by the Contractor, the Board shall have the right to cancel and terminate said Agreement, and the Contractor shall be liable to the Board for any additional cost of completion of the within services, the Board's other costs in connection with the termination, re-letting and completion of the services. All such costs, along with any liquidated damages for delay provided herein, may be assessed by the Board against the Contractor and deducted by the Board from payment to be made to the Contractor under this or any other Agreement at any time between the Contractor and the Board or City. In the event that said costs exceed all sums owed at the termination date of this Agreement, the Contractor shall pay the amount of such excess to the Board upon notice from the Board of said amount, and in the event that said costs and liquidated damages are less than the sum payable under this Agreement as if same had been completed by the Contractor, the Contractor shall forfeit all claims to the difference to the Board. If the Board undertakes to secure the services or any part thereof under this section of the Agreement, the certificate of the Chancellor or his designee indicating the amount of services secured, the cost and excess cost, if any, of completing this Agreement, and the amount of liquidated damages hereunder, shall be conclusive and binding upon the Contractor, its assigns and all other claimants.

24. Board Determination

The Chancellor or his designee shall in all cases determine the acceptability of the labor, materials, or Services which are delivered pursuant to this Agreement, including but not limited to their quality, delivery, and condition, and shall in all cases decide every question which may arise relative to the performance of this Agreement. The Contractor may not rely upon, and the Board shall not be bound by, any explanations, determinations or other statements by or from the Board which are not in writing and signed by the Chancellor or his designee.

25. Investigations

- 25.1 The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the governmental agency that is a party in interest to

the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

- 25.2(a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or,
- 25.2(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then:
- 25.3(a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license may convene a hearing, upon not less than (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- 25.3(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 25.5 below without the City and Board incurring any penalty or damages for delay or otherwise.

- 25.4 The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
- (a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City and Board; and/or
  - (b) The cancellation or termination of any and all such existing City and Board contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City and Board incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Board.
- 25.5 The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:
- (a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
  - (b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
  - (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City and the Board.
  - (d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 25.4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 25.3(a) above gives notice and proves that such interest was previously acquired. Under either circumstances the party or entity must present evidence at the hearing

demonstrating the potential adverse impact a penalty will have on such person or entity.

- 25.6 (a) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
- (b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, licenses, leases, or permits from or through the City or Board or otherwise transacts business with the City or Board.
- (d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

25.7 In addition to and notwithstanding any other provisions of this agreement, the commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or Board, or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Contractor or affecting the performance of this agreement.

26. Reports, Inspection and Records

- A. The Contractor shall promptly provide all reports required by the Board, including without limitation, financial, program, statistical, analytical, narrative and progress reports. Unless otherwise provided herein, the final payment hereunder shall not be made until all reports have been submitted and approved by the Board.
- B. The Contractor shall, until six (6) years after completion of its services hereunder or six years after date of termination of this Agreement, whichever is later, maintain and retain complete and correct books and records relating to all aspects of the Contractor's obligations hereunder. Records must be maintained separately, so as to identify clearly the hours charged to this Agreement and be distinguishable from all other hours charged which are not related to this Agreement.
- C. The Contractor shall make its staff, and premises, books, records, operations, and Services provided under this Agreement, and those of its subcontractors, available to the Board and to any person, agency or entity designated by the Board, at any time, for program, audit, fiscal audit, inspection, observation, sampling, visitation and evaluation, and shall render all assistance and cooperation for said purposes. The

Contractor agrees to attend, upon demand, any investigation conducted by the Board to produce any records and other documents required by the Board at that investigation, to cooperate with the Board, and to give sworn testimony pertaining to those documents or the subject of the investigation; provided only that the investigation, testimony, records and documents relate to the subject of the Contractor's relationship with the Board of Education. If a corporation, partnership or government agency, the Contractor agrees to require its officers, employees and partners to comply with the foregoing.

- D. In its record keeping the Contractor shall also comply with all federal, state and local laws and regulations pertaining to such records, including, without limitation, the regulations of the Comptroller, and shall require its subcontractors to do likewise.
- E. In the event that any federal, state or local government agency, or other public or private agency conducts an audit of any of the Contractor's operations which pertains directly or indirectly to the goods and services provided pursuant to this Agreement, within five (5) working days after receipt by the Contractor of notice of the commencement of such audit the Contractor shall give notice of such commencement to the Board; and within five (5) working days after receipt by the Contractor of a copy of any resulting interim or final audit report, the Contractor shall supply one copy thereof to the Board. (6/24/88)

27. Non-Assignment of Contract

The Contractor shall give its personal attention to the faithful performance of this Agreement. The Contractor covenants that it will not assign, transfer, convey, sublet or otherwise dispose of this Agreement or its right, title or interest therein or its power to execute such Agreement, to any other person or corporation without the previous written consent of the Chancellor or his designee. Request for permission to assign a contract shall be submitted in writing to the Chancellor's designee, Executive Director of the Division of Financial Operations, 65 Court Street, Brooklyn, New York 11201. A non-refundable processing fee of \$250.00 for contract amounts less than \$100,000.00 and \$500.00 for contract amounts \$100,000.00 or greater shall be submitted with the request. Said fee shall be by check or money order and made payable to the New York City Board of Education, Division of Financial Operations. The Chancellor's designee shall grant or deny such requests after consultation with the appropriate Division or Office, the decision is final and binding. If the Contractor in any way violates the terms of this provision, the Board shall have the right to cancel and terminate this Agreement, and the Board shall thereupon be relieved from all liability hereunder. Nothing contained herein shall be construed to affect an assignment by the Contractor for the benefit of its creditors made pursuant to the statutes of the State of New York. No right under this Agreement, or to any monies due or to become due hereunder, shall be asserted against the Board or the City in law or in equity by reason of a purported assignment of this Agreement, or any part thereof, or of any monies due or to become due hereunder, unless authorized as aforesaid. (Rev.11/27/02)

28. Contractor's Staff

The Contractor shall employ or contract for the services of only competent workmen, consultants, independent contractors and other employees as are, or reasonably may be, necessary for the performance of the Services hereunder.

The Contractor warrants that it shall be solely responsible for its employees' work, direction, safety and compensation. (6/84)

The Contractor agrees to replace immediately any employee, and not engage such employee in the performance of this Agreement, if the Contractor is notified in writing that, in the opinion of either the Chancellor, a Community Superintendent, or their designees, such employee is incompetent or otherwise impedes the performance of the services hereunder.

29. Confidentiality of Records

All personally identifiable student and staff information obtained by or furnished to the Contractor by the Board, and all reports and studies containing such information prepared or assembled by the Contractor, are to be kept strictly confidential by the Contractor and shall not be provided or disclosed to any third party without the express written permission of the Chancellor or his designee. The Contractor shall limit access to such material in its control to those of its employees performing services pursuant to this Agreement strictly on a need to know basis. The Contractor shall restrict its use of the information to its performance under this Agreement and shall return all such material to the Board upon the completion of the services herein.

30. Testimony

If the project which is the subject matter of this Agreement at any time becomes involved in a proceeding, to which the Board or the City is a party, before any court, board, tribunal, panel, arbitrator, referee or agency, the Contractor shall provide such knowledgeable witnesses as the Board shall require, free of additional compensation of any kind. Nothing herein shall require the Contractor to provide testimony in any proceeding in which it is a party with interests opposed to those of the Board.

31. No Personal Liability

Neither the members of the Board nor the Chancellor nor any officer, employee, agent or representative of the Board or of the City shall be personally liable, based upon any theory of law or equity, to the Contractor or to any party claiming on behalf of or through the Contractor, under this Agreement, or by reason of any individual's actions or failure to act in any way connected with this Agreement, whether or not the action shall have been within or without an individual's scope of authority. The scope of this provision includes personal injury to any personal interest (commercial or otherwise), physical injury (including death), property damages, and any pecuniary damages where such injuries or damages result from or arise out of negligence. The Contractor further waives any and all rights to make a claim or commence an action or

special proceeding, in law or equity, against any of the aforementioned individuals, and the Contractor hereby assigns its complete right, title, and interest in any such claim, action, or special proceeding to the Board. (Rev. 2/83)

32. Indemnification

The Contractor shall protect, indemnify and hold harmless the Board from any and all claims, suits, actions, costs and damages to which the Board may be subjected by reason of injury to person or property, or wrongful death, as may result of any act, omission, carelessness, malpractice or incompetence of the Contractor, or anyone employed or engaged by the Contractor, in connection with the performance of this Agreement.

33. Conflicts of Interest

- A. Except as stated in paragraph B, no non-governmental Contractor may have on its Board of Directors (or comparable body), employ or have under contract for services (1) any present full-time officer or employee of the City of New York or the Board of Education or any part-time officer or employee of the Board, or (2) any present full-time officer or employee of the City (including the Board of Education) on leave from the City or the Board or any part-time officer or employee of the Board currently on leave from the Board. Generally, the Conflicts of Interest Board may grant waivers of this provision, if an employee or officer is not involved in the Contractor's business with the City or the Board. Said waivers are discretionary and must be approved prior to the commencement of services by that individual. The Board of Education's Ethics Officer must be contacted if an officer or employee wishes to request a waiver. (2/13/01)
- B. No Board of Education officer or employee may serve as an unpaid member of a Board of Directors (or comparable body) of a non-governmental not-for-profit Contractor without the permission of the Chancellor. To obtain this permission, the officer or employee must contact the Board of Education's Ethics Officer. All other City officers or employees may serve as unpaid members of Boards of Directors (or comparable body) of a non-governmental not-for-profit Contractor, if the officer or employee has no involvement with the Contractor's business with the City or the Board. (Rev. 11/27/02)
- C. **No officer or employee of the Board of Education, or the officer or employee's spouse/domestic partner or unemancipated child(ren) can have an ownership interest in the contractor, defined as an interest which exceeds five percent of the firm or an investment of \$32,000 in cash or other form of commitment, whichever is**

less, and any lesser interest when the officer or employee or spouse, unemancipated child(ren), or domestic partner exercises managerial control or responsibility regarding any such firm. (12/2/99)

- D. No former officer or employee of the Board may appear before the Board on behalf of a non-governmental Contractor within one year of the former officer or employee's termination of service with the Board. An appearance before the Board includes all communications with the Board. However, a former employee of the Board is not prohibited from serving on a non-governmental Contractor's Board of Directors (or comparable body), or from employment or contracting for services with the Contractor, provided that the former employee does not appear before the Board within one year of the termination of service with the Board.
- E. No former officer or employee of the City (including the Board) may have any involvement on behalf of a non-governmental Contractor with any aspect of a contract, including services under that contract, if that former officer or employee was involved substantially and personally with any aspect of that contract while employed by the City. Any former City employee whose duties for the City or the Board involved a contract shall contact the New York City Conflicts of Interest Board for clarification before having any involvement with the contract on behalf of a non-governmental Contractor or any other private interest.
- F. The Contractor warrants that, other than a bona fide employee or contractor regularly working as a sales representative for the Contractor, no person, selling agency, or other entity has solicited or secured this Agreement, or has been employed or retained to do so, for a commission, percentage, brokerage fee or contingent fee.
- G. The Contractor shall not give, and warrants that it has not given or promised to give, any gift to a community school board member, school leadership team member or to any officer, employee or other person whose salary is payable in whole or part from Board or City funds, or other funds under this Agreement. The word "gift" shall include, without limitation, money, tangible goods, services, loans, promises or negotiable instruments. (2/13/01)
- H. If the Contractor violates any provision of this paragraph, the Board may, at its option: (1) cancel and terminate this Agreement and be relieved of all liability hereunder; (2) deduct all amounts paid by the Contractor or other value given by the Contractor in violation of this paragraph from payments made or to be made to the Contractor under this or any other Agreement at any time; (3) require the refund of any funds paid hereunder; (4) any combination of the foregoing; or (5) any other action the Board deems necessary and appropriate as permitted by law. Any breach of the warranties or violation of the provisions of

this paragraph shall be grounds to find the Contractor or its principals as not a responsible bidder on other Board or City contracts.

- I. Provider shall adhere to the Central Board of Education policy on Conflicts of Interest, the Chancellor's Regulations on Conflicts of Interest C-110, and the New York City Charter provisions on Conflicts of Interest which are hereby incorporated by reference as if fully attached hereto.

34. Antitrust

The Contractor assigns to the Board its right, title and interest in and to any claim or cause of action arising under the antitrust laws of New York State or the United States relating to the goods or Services purchased or procured by the Board pursuant to this Agreement.

35. Merger and Choice of Law

This written Agreement constitutes the entire agreement of the parties, and no other prior or contemporaneous agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto, or to vary any of the terms contained herein. This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to its conflict of law rules.

36. Participation in an International Boycott

- A. The Contractor agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon the final determination by the Commerce Department or any other agency of the United States that the Contractor or a substantially-owned affiliated company thereof, participated, or is participating, in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Chancellor or his designee may, at his option, render forfeit and void this contract. (1/12/89)

37. No Discrimination

- A. The Contractor will strictly comply with all applicable Federal, State and Local laws pertaining to the subject of discrimination on any ground, as they may now read or as they may hereafter be amended.
- B. The Contractor is, and will remain, an Equal Opportunity Employer. In addition to the other requirements of this paragraph 37, the Contractor shall provide equal opportunity for all qualified persons, and shall not discriminate in employment because of race, creed, gender, color, age, sexual orientation, national origin, handicapping condition, marital status, or religion and shall promote the full realization of equal opportunity. (Rev. 9/20/88)
- C. Pursuant to the provisions of the New York State Labor Law, the Contractor agrees, in its operations performed within the State of New York:

- (1) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, neither the contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- (2) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin;
- (3) That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated by the contractor or subcontractor, or anyone acting on behalf of the contractor in violation of the provisions of the contract;
- (4) That this contract may be cancelled or terminated by the state or municipality, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract;
- (5) The aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York; and
- (6) That the Board is, for purposes of this subparagraph C., a "state or municipality." (Rev. 11/25/96)

38. Equal Employment Opportunity Requirements for Professional Contractors

A. Definition of Terms for the Implementation of a Program of Affirmative Action.

The following terms, when used in this paragraph, shall have the meanings given for them.

- (1) "Employee": Any person employed full or part-time in any capacity by the Contractor or sub-contractor.

- (2) "Minority Groups and Affected Classes": Blacks, Hispanics (Non-European), Asian Americans, American Indians, females and individuals with handicapping conditions.
- (3) "Program of Affirmative Action": A detailed, result-oriented set of written procedures submitted by a Contractor or sub-contractor which when implemented with conscious effort results in compliance with the Equal Opportunity Policy herein, through full utilization and equal treatment of minorities, women and individuals with handicapping conditions at all levels and in all segments of the Contractor's or sub-contractor's work force. An effective Program of Affirmative Action shall include but not necessarily be limited to, the following elements:  
(Rev. 9/20/88)
- (a) Development or reaffirmation of the Contractor's or sub-contractor's Equal Opportunity Policy;
  - (b) Dissemination of the Policy;
  - (c) Responsibility for implementation;
  - (d) A survey and analysis of employment at all levels and in all categories and aspects of the Contractor's or sub-contractor's work force, which determines if and at which levels, categories, and aspects there is an underutilization of minority and female employees;
  - (e) An analysis of employment policies and practices, including but not limited to seniority systems, recruitment, training, promotion, insurance and job benefits and their effects upon minorities, women and individuals with handicapping conditions;
- Corrective actions taken, or to be taken, toward the elimination of any employment policy or practice having a discriminatory effect on minority group members and women; and
- (g) Description of the Contractor's efforts to engage, as sub-contractors, bona fide minority business enterprises and female enterprises.
- (4) "Goals and Timetables": Projected levels of achievement resulting from an analysis by the Contractor or sub-contractor of its deficiencies, and of what it can reasonably do to remedy them within a specified time period.
- (5) "Underutilization": Having fewer minorities, women and individuals with handicapping conditions in a particular job

classification than would reasonably be expected by their availability in the appropriate labor force.

- (6) "The Office": The Office of Equal Opportunity of the Board.

B. Required Program of Affirmative Action

- (1) The Contractor is required to identify and eliminate overt and covert discriminatory practices and implement the Program of Affirmative Action. Upon demand of the Office the Contractor shall submit to the Office a detailed written Program of Affirmative Action (hereinafter referred to as a "P.A.A."). In the event the Contractor submits a P.A.A. not acceptable to the Office, the Office will require the correction or revision of the P.A.A. to its satisfaction.
- (2) In the event the Contractor fails to submit such an acceptable P.A.A. within the time specified in the demand, the Contractor may be declared in default. The Director shall be the sole judge of the P.A.A.'s acceptability. The P.A.A. shall:
  - (a) Apply to all Board of Education professional services contracts with the Contractor;
  - (b) Encompass all phases of the employment process, including evaluation of job classification to ensure job relatedness, recruitment, selection, validity of examinations, retention, layoffs, seniority, assignments, training, promotion, salary and benefits;
  - (c) Fulfill the following requirements:
    - (i) Include measurable goals, reasonable timetables and specific programs to be implemented by the contractor to identify and eliminate deficiencies in employment practices with respect to the underutilization of members of minority groups and members of affected classes;
    - (ii) Include a statement of the present utilization of minority group members and women in the Contractor's work force and a projection of the minority utilization in the Contractor's work force for the life of the Contract and for at least a one-year period succeeding its completion. This statement and projection shall include present and projected (1) rates of hiring and promotion of minority group members and women in specific job categories at each wage rate within each

level of employment and according to major organizational unit, and (2) percentages of minority group and women utilization in specific job categories at each wage rate within each level of employment, and according to major organizational work force;

- (iii) Include all of the Contractor's facilities within New York City as well as those facilities located elsewhere within the continental limits of the United States;
- (iv) Specify the union(s) or other employee organizations to which the Contractor's employees belong, and shall include commitments to good faith efforts to effect Equal Opportunity changes directly or indirectly, in programs by such unions or organizations to recruit, train, qualify or otherwise select members, if such changes are deemed necessary. The P.A.A. shall also include a copy of any agreement with an employee association which affects employment policies and practices;
- (v) Be submitted in such format as shall be specified by the Director of the Office;
- (vi) Include a commitment to submit to the Director a separate P.A.A., of the form (i) to (v) hereof, for each subcontractor prior to approval of the subcontractor by the Board of Education;
- (vii) Include a written evidence or proof which shows that minority entrepreneurs have been solicited and given an equal opportunity to submit proposals and that such proposals have been given equal consideration for award;
- (viii) Contain commitments as to goals for minority and affected classes employment and adoption of equal employment practices not less strict than the commitments contained in the Contractor's most recent P.A.A. which was approved by the Office.

C. Compliance Inspection Report

Upon demand of the Office the Contractor shall, within the specified time, submit to the Office a Compliance Inspection Report. The completed Compliance Inspection Report must be returned to the Office within such time as is specified in the requisition for information accompanying the report form.

D. Conferences

The Contractor shall attend such conferences as shall be required by the Office for the purpose of acquainting it with the statutory and contractual requirements and what specific measures shall constitute an acceptable P.A.A.

E. Implementation of P.A.A.

During the Term of the Contract, the Contractor shall successfully implement the P.A.A. approved by the Office.

F. Default

If, in the opinion of the Office, the Contractor has breached any of the requirements of paragraphs 36 or 37 hereof it may seek to have the Contractor declared in default by the Chancellor's designee as provided elsewhere herein. (Rev. 10/10/02)

For further information concerning these rules, regulations or procedures, contractors may consult with the Office of Equal Opportunity of the Board.

39. MacBride Principles Provisions for Board of Education Contractors

ARTICLE I. MACBRIDE PRINCIPLES

PART A

In accordance with section 6-115.1 of the Administrative Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contract either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

PART B

For purposes of this section, the following terms shall have the following meanings:

"MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

#### ARTICLE II. ENFORCEMENT OF ARTICLE I.

The Contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting

entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or

suspension of the Contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law. (8/92)

40. Set-Off Rights

The Board shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Board's option to withhold for the purposes of set-off any moneys due and owing to the Board with regard to this Agreement, any other agreement with the Board, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the Board for any other reason. The Board shall exercise its set-off rights in accordance with normal Board practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the Board, its representatives, or the State or City Comptroller. (1/95)

41. Non-Collusive Bidding

If this Agreement was awarded by the Board based upon the submission of bids or proposals, Contractor warrants under penalty of perjury, that its bid or price quotation was arrived at independently and without collusion aimed at restricting competition. (10/92)

42. Intentionally Left Blank (Burma Provision Deleted 9/6/01)

43. Intentionally Left Blank (Year 2000 Compliance Required Deleted 11/27/02)

44. Fair and Ethical Business Practices

A. Fair and Ethical Business Practices shall be strictly adhered to during the term of this Agreement. During the term of this Agreement, Contractor shall not:

- (1) File with a government office or employee, a written instrument which intentionally contains a false statement or false information;
- (2) Intentionally falsify business records;
- (3) Give, or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official or public servant;

- (4) Give or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant for any reason;
- Knowingly participate in the criminal activities of any organized crime group, syndicate or “family,” nor shall any person employed by or associated with any such organized crime “family,” syndicate or group participate through criminal means in any of the business affairs of Contractor.

B. Contractor certifies throughout the term of this Agreement, that there have been no changes in circumstances, conditions or status of Contractor’s qualification(s) as reflected in Contractor Questionnaire or other such documents submitted to the Board. Any change in the information provided by Contractor in its questionnaire currently on file with the Board must be immediately reported to the Board. In addition, Contractor shall immediately notify the Board of any of the following events if it becomes known that any director, partner, officer, member or employee of Contractor, or any shareholder owning 5% or more of Contractor’s membership interests:

- (1) is the subject of investigation involving any violation of criminal law or other federal, state or local law or regulation by any governmental agency; or
- (2) is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
- (3) is convicted of any felony under state or federal law and/or any misdemeanor involving a business-related crime. (10/8/98)

45. Indemnification Language

The Contractor shall defend, indemnify and hold the Department and the City harmless from and against any and all claims, suits, damages, judgments, liabilities, costs, and expenses, including reasonable attorneys’ fees, to which they may be subject because of or related to any claim that the Copyrightable Materials or their use constitutes an infringement by the Contractor or a violation by the Contractor of the copyright, patent, trademark, or any other property or personal right of any third party. For the purposes of this provision, “Copyrightable Materials” shall include any reports, documents, data, photographs, software, and/or other materials provided pursuant to this agreement, regardless of whether the copyright in such materials is or shall be owned by the Department, the Contractor, or third parties. This indemnification shall survive the termination or expiration of this Agreement. This indemnification provision shall not be limited in any way by the Contractor’s obligations to obtain insurance as provided under this Agreement. Furthermore, Contractor shall defend and settle at its sole expense all suits or proceedings brought against Contractor arising out of the foregoing. However, in cases

involving software, no such settlement shall be made that prevents the Department from continuing to use the software without the Department's prior written consent, which consent shall not be withheld unreasonably. 1/15/03

**END OF DOCUMENT**



**THE DIVISION OF CONTRACTS AND  
PURCHASING**

