

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



**PRE-QUALIFICATION SOLICITATION  
#1C617**

**Title: ENGLISH LANGUAGE LEARNERS (ELL)  
PROFESSIONAL DEVELOPMENT**

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 AM On: June 26, 2007**

FIRST CONSIDERATION PROPOSALS MUST BE RECEIVED BY THE ABOVE DUE DATE AND TIME

**PRE-PROPOSAL CONFERENCE WILL BE HELD ON:  
JUNE 7, 2007 at 1:30 PM  
AT ST/ FRANCIS COLLEGE – FOUNDERS HALL  
182 Remsen St., Brooklyn, NY 11201**

*Please bring a copy of the PQS with you to the Conference*

**FOR ADDITIONAL PROCUREMENT INFORMATION SEE OUR  
WEBSITE: <http://schools.nyc.gov/DCP>**

This Pre-Qualification Solicitation is issued by the  
Division of Contracts and Purchasing  
65 Court Street, Brooklyn, New York 11201  
Telephone: (718) 935-2650 – Fax: (718) 935-5117

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

# PRE-QUALIFICATION SOLICITATION #1C617

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**FOR THE PURPOSES OF THIS SOLICITATION, “WE,” “US” OR “OUR” SHALL MEAN THE NEW YORK CITY DEPARTMENT OF EDUCATION (NYCDOE), AND “YOU” OR “YOUR” SHALL MEAN THE ENTITY SUBMITTED THE PROPOSAL TO THE NYCDOE. ALTHOUGH THIS AGENCY IS BEING REFERRED TO AS THE NYCDOE, FOR CONTRACT AND INSURANCE PURPOSES, THE AGENCY IS STILL THE BOARD OF EDUCATION AND THEREFORE THE CONTRACTS AND INSURANCE CERTIFICATES MUST STILL REFERENCE THE NEW YORK CITY BOARD OF EDUCATION AND THE CITY OF NEW YORK.**

## SECTION 1

# PROGRAM SUMMARY, BACKGROUND, AND PURPOSE OF THIS PRE-QUALIFICATION SOLICITATION

## 1. PROGRAM REQUIREMENTS

### 1.1 PROGRAM OVERVIEW

The New York City Department of Education (NYCDOE), on behalf of the Office of English Language Learners, (OELL) is seeking proposals from organizations experienced in providing high quality, ongoing professional development services to educators of English Language Learners (ELLs). The OELL provides capacity building and rigorous professional development to teachers and other pedagogues involved in the education of ELLs and second language learners. Since the inception of the *Children First* reform agenda in 2003, the OELL has brought nationally renowned experts to New York City to assist our educators in implementing the best practices and programs for New York City's children. The OELL's top priority is to collaborate with organizations that can deliver the most effective teaching strategies to New York City's instructional leaders and teachers so that they, in turn, can provide coherent, rigorous ELL programs. Therefore, all professional development must be research-based, field-tested and aligned with the *Children First* agenda.

During the 2005-2006 school year, there were more than 141,000 ELLs in New York City public schools. Approximately 13% of the total NYCDOE student population of 1.1 million receives bilingual and/or ESL services. Approximately 16,000 of these students were in special education classes.

The NYCDOE anticipates entering into multiple requirements agreements with vendors who can provide intensive, ongoing, research-based professional development services in any or all of the four components in Section 1.2. Each component should build the capacity of instructional staff and leadership to develop and support quality instruction for emergent readers (K-3) as well as ELLs in fourth grade through high school.

Organizations can propose professional development that builds the capacity of elementary Transitional Bilingual Education (TBE) and Dual Language teachers working with emergent literacy students (K-3) to develop students' native language literacy. Respondents may propose professional development that addresses instruction in **Spanish** and/or one of the seven other most commonly spoken languages by ELLs in TBE and Dual Language programs in New York City public schools: **Arabic, Bengali, Chinese, Haitian Creole, Korean, Russian, and Urdu**. Professional development sessions must be offered in the language of instruction for these teachers to enhance their instructional and academic vocabulary. Further, teachers should develop native language literacy strategies using the current balanced literacy approach from the citywide comprehensive core curriculum under *Children First* reforms.

Also, organizations can propose professional development for teachers of ELLs, grades K-12. Professional development should emphasize developing educators' capacity to incorporate English-as-a-Second-Language (ESL) teaching strategies in the content instruction delivery, helping ELLs access the core curriculum in the primary subjects: English, social studies, mathematics, and science. The strategies should include methods for increasing content-area reading comprehension, academic language development, subject matter entry and engagement, and opportunities for academic English language productions for ELLs. Professional development must create a self-sustaining cadre of quality teaching experts capable of delivering this professional development to teachers of grades 4-12. Further, professional development providers must model, observe and mentor professional development participants as they develop the ability to deliver professional learning opportunities to others.

## **1.2 BASE PROGRAM REQUIREMENTS**

The OELL supports the development of high quality effective instruction for ELLs in all schools and focuses on increasing the instructional capacity of NYCDOE educators at all levels. These efforts are supported through the guidance of a Distinguished Advisory Group composed of some of the most prominent and highly respected ELL education researchers in the nation.

Given the size of the New York City public school system, organizations must be prepared to not only provide direct instruction to teachers of ELLs, but also build capacity of ELL leaders so that they can guide and support instruction. ELL leaders include school-based teachers, assistant principals, principals, and instructional specialists.

Professional development support provided by the OELL must be interactive, ongoing and research-based. Each professional development effort must model active and engaging instruction based on well-researched ELL education theory. The intensive, continuous nature of these professional development opportunities must allow teachers to practice new learning in classrooms, share the experiences with colleagues, and reflect on the implementation of the new learning during ongoing professional development sessions.

The successful Proposer(s) may choose to provide some or all of the following services for Components 1-4:

**Component 1: Professional Development Services in Spanish**

**Component 2: Professional Development Services in one or more of the following languages: Arabic, Bengali, Chinese, Haitian Creole, Korean, Russian, or Urdu.**

**Component 3: Professional Development on Academic Language Development**

#### **Component 4: Professional Development on Mathematics, Science, Social Studies, English and/or Foreign Language instruction for teachers of ELLs**

Organizations should consider the suggested criteria below, which detail specific professional development programs sought, and incorporate the four components mentioned above.

***Native Language:** Provide ongoing professional development (in the commonly spoken languages) on content-mastery for content-area Kindergarten through high school bilingual program teachers focused on developing the teachers content mastery skills and simultaneously developing their academic language instructional delivery vocabulary and fluency. Provide ongoing professional development in Arabic, Bengali, Chinese, Haitian Creole, Korean, Russian, Spanish or Urdu* focused on both building teachers' native language literacy development skills and their native language instructional vocabulary. Build the capacity of Kindergarten through high school content-area Transitional Bilingual Education (TBE) and Dual Language teachers to develop their students' content-area mastery in the native language. Professional development sessions must be offered in the language of instruction for these teachers to enhance their instructional vocabulary while research-based strategies should focus on the development of native language academic literacy. Professional development will focus on teachers' content-area mastery for the purposes of instruction, specifically in math, science, and social studies. Proposer(s) are asked to provide a minimum of 60 hours of professional development for at least 20 teachers, per language and per content-area, aligned with the standards-based focus of *Children First*, for each content-area. Mathematics courses should emphasize the content knowledge necessary for the delivery of the citywide comprehensive core curriculum in mathematics, especially upper-level geometry, algebra, trigonometry and calculus.

***Special Education:** Provide rigorous professional development focused on developing the capacity of a professional development leadership team composed of ELL instructional support staff and special education instructional support staff to deliver professional development to all new monolingual special education teachers on research-based, effective instructional strategies for working with ELLs with disabilities. Professional development should build the capacity of leadership teams including ELL and Special Education Instructional Support Specialists to deliver 60 hours of professional development focused on strategies for educating ELLs with disabilities to all new monolingual special education teachers across the city. This professional development should also focus on building collaborations between the diverse instructional specialists, developing their ability to deliver professional development in teams. Finally, this professional development should provide specialists and leadership teams with materials on the regulations that new Special Education teachers working with ELLs face, as well as strategies and additional resources.*

*Provide professional development on alternatives to Special Education referrals for ELLs to school teams. Provide 30 hours of professional development to 600*

school teams addressing alternatives to referring ELL students to special education. Each school team will include a special education teacher, an administrator, three general education teachers, two ELL teachers, the parent coordinator, the school's Instructional Support Specialist for Special Education (or the school's SETRC trainer) and the school's ELL Instructional Support Specialist. Optimally, professional development will offer 30 hours for each school team. This professional development will help teams develop a repertoire of skills for meeting the needs of ELLs within the general education and ELL classrooms by: differentiated instruction to address apparent disabilities and differences in the general education classroom; strategies for addressing behavioral issues in the general education classroom (applied behavioral analysis); developing accommodations in materials, instructional delivery and assessments; learning to differentiate between language acquisition issues and actual language and/or learning disabilities; differentiating between school interruption issues (SIFE students) and actual learning disabilities; strategies for addressing student reading differences in the general education classroom; and developing systemic, school-wide systems of support within the general education classrooms. Further, school teams will learn to foster a supportive atmosphere for culturally responsive education in their schools, with a particular emphasis on how culture relates to language and learning.

***Literacy:*** Provide professional development to ESL teachers on English Language Arts (ELA). Provide 120 hours of professional development on English Language Arts content-area delivery for 2,000 ESL teachers of grades 1-12 for the 2007-08 school year. Preferably, these hours would generate credits towards a New York State Professional Certificate in either English Language Arts grades 5-9 or English Language Arts grades 7-12 (depending on the grade level of the teacher's initial ESL Certificate). This professional development should also help participants incorporate new strategies in the delivery of the *Children First* balanced literacy core curriculum.

*Provide professional development for elementary grade teachers on developing the vocabulary skills of ELLs.* Provide 120 hours of professional development for 600 elementary grade ELL teachers (Bilingual and ESL, K-5) on how best to build ELL students' English vocabulary skills. This professional development should include strategies for helping children build on the cognates and word rules in their home language, strategies for teaching children to develop vocabulary through reading, and strategies for teaching children to develop and reinforce vocabulary through writing. In addition, the professional development should help teachers develop guidelines for reading materials selection that will support students' vocabulary skills. All vocabulary instruction needs to be aligned with the balanced literacy core curriculum of *Children First*.

***Dual Language:*** Provide ongoing rigorous professional development on effective implementation and sustainability of optimum Dual Language programs, emphasizing target language oral proficiency development (in **Arabic, Bengali, Chinese, Haitian Creole, Korean, Russian, Spanish or Urdu**), literacy and cultural awareness. Provide 120 hours of professional development for Dual Language program teachers and administrative staff to build their capacity for

implementing effective Dual Language programs. This includes developing and supporting teacher expertise in instructing mixed language groups of students—half English home-speakers and half target-language-home speakers. Providers must build teacher expertise in developing target language literacy and literacy enhancement in the languages of NYCDOE Dual Language programs and proposed programs. Participants must be able to observe exemplary lesson plans for target language acquisition and cultural understanding and observe the modeling of appropriate language use for Dual Language students in the target language. Proposers may choose to provide professional development support for one or more languages. Content-area curriculum should be aligned between languages and with *Children First*.

*Provide professional development on planning for the successful implementation of a Dual Language program. At the completion of the professional development, each participating school should have a comprehensive written implementation plan and a bilingual brochure to publicize the program to families and the surrounding community. Provide 120 hours of professional development for 10 to 20 school teams who are planning to implement a new Dual Language program for the 2007-08 school year on how best to plan for successful implementation. The school team will include principal, three teachers, parent coordinator, two parents and the school's ELL ISS or the Region's DL ISS. As a result of this professional development, the school teams should develop skills for organizing a Dual Language program (scheduling, staffing, professional development and materials); become familiar with Dual Language research, hosting family informational sessions and addressing family and community concerns; recruit participants; develop curricular guides to address themes, subjects or concepts that will be taught; and determine necessary assessments for both informing instruction and demonstrating success.*

***Language Allocation Policy:*** *Provide ongoing professional development for the ELL Professional Development Leadership Team focused on building the capacity of TBE teachers, and the expertise of their instructional support staff, to effectively implement the NYC Language Allocation Policy. At the completion of the professional development, each involvement school should have a school-specific written language allocation policy aligned to the NYCDOE policy. Provide 30 hours of rigorous and thorough professional development for 120 teachers and/or assistant principals and 120 instructional support staff. The goal of this professional development is to create a cadre of experts in the strategies and expertise necessary for implementing the NYCDOE Language Allocation Policy aligned with city and state regulations. This professional development should address data analysis and differentiating instruction, including: whole class instruction for students with a variety of English language proficiencies, using heterogeneous groups to maximize student language learning from other students, creating small groups based on English proficiency, and using team teaching to increase academic language and subject matter gains. Finally, the professional development should provide participating educators with a variety of practical schedules for several situations and grade levels, all aligned to the requirements of the *Children First* agenda.*

***Parents of ELLs:*** Provide professional development to the ELL leaders and instructors as well as Parent Coordinators to help them engage ELL and immigrant parents in the academic lives of their children, including college application and financial aid processes. Provide 30 hours of professional development for school teams including administrators, parent coordinators, teachers and guidance counselors on parent and family involvement in education. Each team will consist of at least five educators and the professional development should target at least 600 schools. Also, the professional development should target members of the ELL instructional leaders and Parent Coordinators. A primary focus will be on how school teams can collaborate to provide optimal support for ELL families. This professional development must include, but is not limited to, creating a welcoming atmosphere for ELL parents in each school, building bridges between learning at home and learning in the classroom for ELL families, ELL parents as co-teachers, and including ELL family voices in school policies and programs.

***Classroom libraries:*** Provide professional development focused on using English and native language classrooms and school libraries to augment ELL children's comprehension and engagement. Provide 60 hours of professional development for teachers of ELLs and their school librarians on native language libraries. Professional development should focus on how to encourage ELLs to use classroom and school libraries to enhance their individual reading development and increase their personal reading time. This professional development will address how to build collections that are high interest, engaging, and useful for developing both children's home language literacy and their English literacy. This professional development should target 240 teachers and 50 librarians. All literacy strategies and topics need to be aligned to the balanced literacy core curriculum of *Children First*.

***Compliance and Instruction for Administrators:*** Provide professional development on ELL programs, research, regulations and support for school-based administrators. Provide 24 hours of professional development for 1200 school-based administrators on what administrators need to know about ELL education to provide optimum support for the academic success of ELL children in their schools (roughly one administrator per school). A primary focus of this professional development will be on how to staff and support effective instructional programs for ELL children. This professional development should address the necessary components of effective ESL, Transitional Bilingual and Dual Language models and the research informing each model. Further, the professional development should build school-based administrator's knowledge base of the NYCDOE language allocation policy, ELL assessments, ELL regulations and ELL supports. Additionally, the professional development should help administrators develop guidelines for staffing, scheduling, curricular design and materials that are aligned to NYCDOE ELL program policies and are also informed by research. Finally, all strategies for curricular support and scheduling need to be aligned to NYS standards and to *Children First*.

***Assessments:*** Provide professional development on preparing students for New York State and New York City mandated tests and on using the assessment data to

*inform instruction.* Provide 30 hours of instruction to ELL instructional leaders and 1300 teachers (one per school) on how best to prepare ELLs for state-mandated testing (NYSESLAT, New York State 4<sup>th</sup> and 8<sup>th</sup> grade ELA and math tests, and the Regents high school exams) and on how to use data from state tests, city tests and interim assessments to inform instruction. This professional development should include separate sessions for each of the following grade level spans: K-4 teachers, 5– 8 grade teachers, and high school teachers.

### 1.3 **PROPOSAL RESPONSE REQUIREMENTS**

All proposals received must answer and/or address the following issues:

- i. **Materials** - What are the specific intentions of the materials that will accompany your proposed services? Is the purpose of the materials specifically outlined in the scope and accounted for in Appendix F? Can the materials for the teachers be copied for the students? If so, then how will the materials be distributed? How will the students get the necessary updated information? (Online or physically, which option is more cost effective?)
- ii. **Capacity** - How will these workshops or proposed services be assessed for their completion, accuracy and/or satisfaction? How many NYC schools can you, the proposed vendor, handle at one time? How much time is needed from the vendor, starting from the completion of the work order to the implementation (start) of the proposed workshop or service?
- iii. **Schedule** - When can these proposed services be provided and how often? How much notice do schools and/or districts need to give before a vendor can set up and execute a workshop?
- iv. **Financing** - At what point before or after a workshop or service has been completed, that an invoice will be created to include services rendered? Will you, the proposed vendor, accept Inflation increases, for all 3 year contracts = 1 price adjustment will be accepted, and for 5 year contracts = 2 adjustments. JULY 1<sup>st</sup> will be the date for every fiscal change. Fiscal changes cannot occur during the school year. Within the proposal, price escalations must be discussed and they must be within the ranges set forth by the Federal Bureau of Labor & Statistics.
- v. **Accommodations** - Where will the proposed services or workshops be held? Will it be at a remote location away from the school, or within the school? If the workshops are held at the school, will it be cheaper than a workshop done at a remote location? Will travel be included in the proposal, how will the students/teachers/parents get to the location or facility? If the proposed services are at the school, what will the travel expenses total for the proposed vendor getting to the school and/or regional office?
- vi. **Special Conditions** – Please show that the proposed vendor will provide the complete acceptance of all contract terms and conditions which are favored for this process. Exceptions and deviations will not be accepted, unless a prior agreement has been made with the New York City

Department of Education. Also please address the acceptance of the school or districts Right to Cancel. Whereas the school or district has 48 hours to cancel a proposed service or workshop. The vendor can only charge up to 20% of intended earnings or service fees for that day. Each vendor will be limited to two (2) submission opportunities per six month period for this pre-qualification solicitation. This period will begin upon the initial proposal reception date. Any proposed vendor who has submitted the first proposal for consideration will have up to 10 business days from the date of notification to reply with the 2<sup>nd</sup> submission. The 2<sup>nd</sup> submission must include all changes, corrections and recommended alterations. In addition, each vendor must also create a general email address that is accessible by more than one staff member, so the NYCDOE can properly notify the proposed vendor of changes and/or updates.

## **SECTION 2 VENDOR QUALIFICATION REQUIREMENTS**

### **2.1 VENDOR QUALIFICATION REQUIREMENTS**

All proposals received on or before the Proposal Due Date and Time and at the location specified in the Pre-Qualification Solicitation will be evaluated to determine whether they meet the following Minimum Qualifications:

- i.** Organizations submitting proposals, profit or non-profit, must have staff with a minimum of three (3) years experience providing professional development services to educators of ELLs.
- ii.** Organizations submitting proposals must have verifiable experience providing professional development for Bilingual Education teachers/educators in **Arabic, Bengali, Chinese, Haitian Creole, Korean, Russian, Spanish** and/or Urdu.
- iii.** Organizations submitting proposals must have verifiable experience providing professional development in subject areas such as Mathematics, Science, Social Studies, English, Foreign Language and Visual and Performing Arts. Proposals must articulate clearly what can be offered in subject matter and academic language development.

### **2.2 Program Plan/Narrative**

The Program Plan/Narrative must be a clear and concise program description that addresses the Proposer's overall methodology, scope of services and comprehensive service plan. Each proposal should show a clear understanding of the needs noted in this PQS and demonstrate how the plan will meet the goals and objectives of this particular PQS. Proposers must provide a detailed description of the methods that will be employed to accomplish the tasks in the PQS. Proposals must contain a work plan for the 2007-08 school year and include but not be limited to:

- Proposed timeline or schedule for the implementation of each activity outlined (Scope of Services).
- Personnel available for the different components of the implementation plan.
- Methods used to conduct the professional development activities.

### **2.3 Organizational Capacity**

In this section, Proposers must show evidence of adequate human, organizational, technical, and professional resources and abilities to meet the needs of this PQS. Proposals must include:

- An organizational chart for the overall company responding to the PQS, showing the specific members of the organization slated to work on this project.
- Resumes of key personnel.
- Designation of a project coordinator.
- Details of the organizations reporting capabilities, including frequency and depth of reports and follow-up reporting.
- Assurances that your organization has or is able to employ and maintain the permanent, per diem or subcontracted staff necessary to provide experienced service providers and logistical and administrative personnel.
- Assurances that your organization has the flexibility necessary for working in diverse situations in terms of locations, technological support, catering, and school calendar changes.

### **2.4 Demonstrated Effectiveness**

Organizations should include a description of all prior experience in the provision of these or similar services as well as evaluation data demonstrating program effectiveness. Proposers should

- Detail background and experience in providing these services (NYCDOE reserves the right to verify any experience presented), including the specific area (s) listed in Section 1.1.1 that the organization will provide.
- Detail history of successfully working in urban public schools.
- Include letters of reference from at least three funding sources/clients.

- Detail the alignment of the professional development with current educational research in this area.

### **SECTION 3 PROPOSAL PACKAGE FORMAT**

If your institution would like to be considered for a contract for these services, please send submit 1 original and 1 electronic copy (containing PC viable applications on a CD) of the following:

- 3.1 A cover letter signed by an authorized individual in your organization expressing interest in providing these services.
- 3.2 The completed Proposal Form (Appendix E), which is located with this document on the web site.
- 3.3 The completed Price Quotation Form (Appendix F and Appendix G), which is located with this document on the web site.
- 3.4 Any promotional literature or catalog describing your services must be submitted via electronic copy using PC viable applications on a 3.5” diskette or CD so they can be viewed and evaluated by the NYCDOE.
- 3.5 Letters of recommendation or names of references from at least 3 users of your service.

In addition, include the following in the original package:

- 3.6 Applicants are also required to submit current Vendor Information Exchange System (VENDEX) forms WITH THE PROPOSAL. The City is legally required to use this computerized data system to help it make well informed decisions when selecting a vendor. Vendex provides the City with comprehensive management information so that it may better serve the needs of the citizens of New York City. These forms are located at:  
<http://schools.nyc.gov/Offices/DCP/Vendor/VendexGuide>

**Please note: notwithstanding the instruction on page 3 of the Vendor’s Guide to Vendex, you must include original Vendex forms WITH YOUR PROPOSAL. Also note that if your organization has submitted a VENDEX form in the last 3 years, you only need to submit a CERTIFICATE OF NO CHANGE with your proposal.**

- 3.7 Please include a check for \$25.00 in order to process this request.
- 3.8 Please attach a certificate of insurance naming the City of New York and the New York City Department of Education as an additional insured. Coverage should be consistent with the insurance information in Appendix A1 below.

Complete Packages should be sent to:

**James E. Whitfield**  
**Division of Contracts and Purchasing**  
**New York City Department of Education**  
**65 Court Street, Room 1201**  
**Brooklyn, NY 11201**

If you have any questions, please e-mail them to [jwhitfield2@schools.nyc.gov](mailto:jwhitfield2@schools.nyc.gov)

## **SECTION 4 GENERAL INFORMATION**

### **4.1 Incurring Costs**

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

### **4.2 Oral Presentations/Demonstrations/Negotiations**

The NYCDOE may require vendors to give oral presentations regarding their proposals. At such presentations, vendors may be required to demonstrate or exhibit aspects relating to their proposal as requested by the NYCDOE. The NYCDOE reserves the right to: (i) reject all proposals submitted; (ii) accept any proposal or alternate as submitted without negotiations; (iii) require revisions to, corrections of, or other changes to any proposal submitted as a condition to its being given any further consideration.

### **4.4 Terms and Conditions**

All contracts resulting from this solicitation shall be subject to the attached General Terms and Conditions (Appendix B: Department of Education, Terms and Conditions).

### **4.5 Contract Award**

The New York City Department of Education reserves the right to award a contract(s) to other than the vendor(s) offering the lowest overall cost. The contract(s) resulting from this solicitation shall be awarded to the qualified vendor(s) whose proposal(s) the New York City Department of Education has determined to be the most advantageous. All contracts resulting from this solicitation shall be signed by the vendor(s) within a reasonable time upon receipt, which period shall not exceed 30 days. Thereafter the vendor(s) is (are) deemed delinquent, 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.

**4.5.1** Completion and submission of an appropriate Office of Equal Opportunity form. i.e. Workforce profile or Company's Equal Opportunities Work plan; does **not** apply to M/WBE certification.

**4.6 Termination of Contract**

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

**4.7 CONTRACT TERM**

The contract(s) resulting from this SOLICITATION will be for a term of 5 years.

**4.8 TYPE OF CONTRACT**

This solicitation may result in the award of one or more system wide requirements agreements.

Requirements agreements are not commitments to purchase. Only a purchase order issued by a school, district, or central office constitutes such a commitment.

The estimated contract award for a requirements contract is based upon the NYCDOE’s estimated requirement for that service over the contract period. NYCDOE may purchase all, none, part, or more than the estimated quantity identified.

**SECTION 5 PROPOSAL EVALUATION PROCESS**

**EVALUATION PROCEDURE**

All proposals received by the NYCDOE will be reviewed to determine if they meet all of the submission and Minimum Qualifications prescribed in this Pre-Qualification Solicitation. Proposals meeting these requirements will be evaluated and rated by an Evaluation Committee applying the evaluation criteria prescribed below. The NYCDOE reserves the right to conduct site visits to verify facility or other information contained in a proposal and may require a Proposer to make a demonstration/presentation of their services or submit additional written material in support of a proposal.

The Evaluation Committee makes every attempt to match the submitted capacities of the highest rated firms with the Department of Education’s projected needs. However, the DOE reserves the right to award vendors whose capacity exceeds the projected needs in case other contracts are terminated. The Department also reserves the right to award vendors whose capacity does not meet projected needs in case many vendors receive low ratings.

**5.1 EVALUATION CRITERIA**

The scoring table (below) will be used to evaluate each submitted proposal. The closer your proposal achieves the Desired Characteristics, the higher points it will receive in each related Response Category.

<u>Response Category</u>	<u>Desired Characteristics</u>	<u>Maximum Points</u>
Program Plan	Program Plan provides detailed description of the scope of services that	<b>25 Points</b>

	includes outcome goals and implementation details for each service.	
Organizational Capacity	Evidence that the organization's human, organizational, technical, and professional resources can support the proposed scope of services.	<b>25 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>
Prices/Charges		<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 PQS has four (4) forms for you to use in your proposal, Appendices E1, E2, Appendix F and Appendix G, that **must** be downloaded from our website, <http://schools.nyc.gov/Offices/DCP/Vendor/RFP>. These forms are in Microsoft Word and Excel. 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. June 26, 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 a basis for Proposal resubmission or disqualification. This list of submission requirements is to help Proposers insure that their responses to this PQS are complete.

### **6.2 Proposal Form (Appendix E1)**

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

1. Company Information
2. Minimum Qualifications
3. Program Plan/Narrative
4. Organizational Capacity
5. Demonstrated Effectiveness
6. Government Contracts
7. Exceptions and Deviations Form
8. Signature Page

## APPENDIX A1

### 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 certifications(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 Executive Director, Division of Contracts and Purchasing, 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 Executive Director, Division of Contracts and Purchasing 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 Executive Director, Division of Contracts and Purchasing.
- 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 Executive Director, Division of Contracts and Purchasing, 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 Executive Director, Division of Contracts and Purchasing, 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 **\$1,000,000** 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.*

NAIC #

CUSTOMER \* CERTIFICATE OF INSURANCE

ISSUE DATE:

PRODUCER  
ONLY AND CONFERS NO RIGHTS UPON  
EXTEND OR ALTER THE COVERAGE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION  
THE CERTIFICATE HOLDER THIS CERTIFICATE DOES NOT AMEND,  
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	LIMITS
		GENERAL LIABILITY				GENERAL AGGREGATE \$
A		<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP AGG, \$
		<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR,	REQUIRED			PERSONAL & ADV, INJURY \$
		<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT.				EACH OCCURRENCE \$
		<input type="checkbox"/> B.F. VENDORS				FIRE DAMAGE (ANY ONE FIRE) \$
		<input type="checkbox"/>				MED. EXPENSE (ANY ONE PERS) \$
		EXCESS LIABILITY				
		<input type="checkbox"/> UMBRELLA FORM				EACH OCCURRENCE \$
		<input type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE \$
B		WORKER'S COMPENSATION				<input type="checkbox"/> 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 THE COMPANY, ITS AGENTS OR REPRESENTATIVES,

AUTHORIZED REPRESENTATIVE:

## APPENDIX A2

### **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, Division of Contracts and Purchasing . 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 Executive Director, Division of Contracts and Purchasing, 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 A3 – 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:

<b>Scope of Services</b>
<ul style="list-style-type: none"><li>• Develop Web in accordance with NYCDOE existing user equipment and software standards</li><li>• .NET Framework (version 1.0 SP2 as of November 2003)</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>
<b>Security Levels</b>
<ul style="list-style-type: none"><li>• Encryption: SSL</li><li>• Adhere to CISAFA 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>
<b>Server/Storage Requirements</b>
<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></ul>
<b>Browser</b>
Compatible with Internet Explorer 5.5 and Netscape 4.7 and above, and AOL browsers
<b>Connections Speeds</b>
<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</li></ul>

locations (home, etc.).

#### **Downloadable Modules**

- Downloads are only allowed in training Centers and Central Offices.
- 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 and will accept UNIX/AIX/Linux as well.
- 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 A4

### 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 SOLICITATION:

- **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 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;
  - (f) 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;
- (5) 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

# APPENDIX C SYSTEM WIDE PROFESSIONAL SERVICES REQUIREMENTS CONTRACT WORK ORDER

This work order is required prior to issuing a purchase order to ensure that the district/school/office and the vendor are in agreement as to the terms of the purchase. No purchase order will be issued without a complete and signed work order. This work order does not replace the contract terms. Rather, it explains the terms for this specific engagement.

Pricing and services must be wholly consistent with the terms and conditions of the contract.

<b>VENDOR NAME:</b>
ADDRESS:
CONTACT:
TEL./FAX:
E-MAIL:

Date Issued \_\_\_\_\_

\_\_\_\_\_

District #

School

\_\_\_\_\_

Contract #

Vendor #

I hereby certify that the attached scope of work accurately and completely describes the work to be performed and is consistent with the terms of the above-referenced contract.

\_\_\_\_\_  
Authorized Vendor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Principal/Superintendent or designee

\_\_\_\_\_  
Date

.....FOR DISTRICT USE ONLY.....

Purchase Order Number \_\_\_\_\_

Location Code \_\_\_\_\_

Date Issued \_\_\_\_\_

Contract # \_\_\_\_\_

**Scope of Work  
(Make copies as necessary)**

Services to be delivered. For each service, **include service description, number of recipients, location of service, date(s) of service, deliverables, if any, as well as unit, cost, number of units to be purchased and the total cost of the units.** Please refer to the sample.

1. CREATING A MUSEUM IN THE SCHOOL – Students will actively

Participate in the creation of a museum/gallery in PS. 88. 5 sessions,

11/10/02-11/14/02, 25 students, \$50 per student.

	Unit	Unit Cost	# Units	Total Cost
	Student	\$50	25	\$1,250

2. PROFESSIONAL DEVELOPMENT WORKSHOPS – Teachers will be

Receiving 4 workshops in music, theater and the visual arts. 12/1, 12/5-12/6,

And 12/8/02. Workshops run 2 hours. 15 teachers, \$100 per workshop.

	Workshop	\$100	4	\$400
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3.

4.

**TOTAL  
COST**

**\$1,650**

## **APPENDIX D** **INVOICE FORM**

On the following page is a suggested standard invoice form to be used when billing the Department of Education for services. This forms contains the minimum information we require to process your invoice. The fields on the invoice form should match the fields on the corresponding Work Order form, Purchase Order, and Contract.

**INVOICE FORM**  
**VENDOR'S LETTERHEAD**

Vendor's Invoice No.: \_\_\_\_\_

Date of Invoice: \_\_\_\_\_

TO: New York City Department of Education  
(For address, see Box 3 of the Purchase Order)

NYCDOE Contract #	
NYCDOE Purchase Order #	
Service Dates	
Location of Service (School, District #, etc)	
Vendor Contact Name and Telephone Number	

ITEM DESCRIPTION	CONTRACT UNIT	CONTRACT UNIT PRICE	QUANTITY OF UNITS DELIVERED	AMOUNT
			<b>INVOICE TOTAL:</b>	

VENDOR'S AUTHORIZED REPRESENTATIVE, \_\_\_\_\_  
(NAME AND TITLE), CERTIFIES THE ACCURACY OF THIS INVOICE TO THE NEW YORK CITY DEPARTMENT OF EDUCATION.

\_\_\_\_\_  
Signature and Date

**END OF DOCUMENT**



**THE DIVISION OF CONTRACTS AND PURCHASING**