

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



REQUEST FOR PROPOSALS

RFP # R0051

Universal Prekindergarten Services 2007 - 2010

**Sealed proposals will be received by
the appropriate Regional offices
Reference page 24 for addresses**

Until: 4:00 P.M. On: FEBRUARY 5, 2007

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

**REFERENCE SECTION 7.4 – PAGES 26 FOR DATES, TIMES, AND LOCATIONS
OF PRE-PROPOSAL CONFERENCES**

Please bring a copy of the RFP with you to the Pre-Proposal Conference.

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

**SUBMIT ONE ENVELOPE CONTAINING THE ORIGINAL and 4 COPIES
REFERENCE RFP R0051 ON THE LABEL**

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

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

1.1 DEFINITIONS

- **Half Day** UPK services shall mean a program that is open for 2.5 hours each day (Monday-Friday).
- **Full Day** UPK services shall mean a program that is open for 6 hours and 20 minutes or 31 hours and 40 minutes per week Monday-Friday with no single day extending more than 7 hours.
- **Eligible community-based organizations** shall include but are not limited to Head Start, child care centers, preschool special education 4410 providers, religious/No Permit Required (“NPR”) providers and nursery schools, family day care centers and group family day care centers.
- **Eligible Child** shall mean a child who is a resident of New York City and who is four years of age on or before December 31st of the year in which he or she is enrolled. An eligible child may participate in the program when:
 - A report of a medical examination, completed within 90 days of admission is signed by a physician. Evidence of medical status must be documented on the Department of Education’s Cumulative Record Card for each child served within the program.
 - The child has been immunized to the extent appropriate for his/her age in accordance with section 2164 of the Public Health law, or was granted an exemption from such immunization. This exemption must be presented in writing and signed by an authorized official.

1.2 RFP SUMMARY

The Request for Proposal (RFP) is a solicitation process intended to identify eligible high-quality early childhood providers who are willing to collaborate with Region(s) to implement the Universal Prekindergarten Program. The information received through the RFP process will be used by a Region to award a contract to an early childhood provider who demonstrates the ability to comply with the requirements of the New York City Department of Education’s Universal Prekindergarten Program goals, objectives and regulations.

The Universal Prekindergarten Program is offered in two components as follows:

- Component 1: Half Day UPK Program services
- Component 2: Full Day UPK Program services

It is important to recognize that funding for the Full Day program is uncertain.

This RFP will result in the award of a non-exclusive requirements contract to successful proposals submitted by eligible early childhood providers.

The term of the initial contract will be July 1, 2007 to June 30, 2010, and, at the NYCDOE's option, the contract may be extended for an additional two-year period, with an increase in the cost per child corresponding with the consumer price index and subject to the availability of funding. In addition, providers who are reapplying must meet the following terms:

1. Successful completion of the Prekindergarten Instructional Review conducted by the Region's Early Childhood Education Office and/or the Department of Education's selected program assessment tool.
2. Successful completion of the Mid-Year and End-Year Fiscal Report by the Region's Contract Administration Officer.
3. Satisfactory financial audit conducted by an authorized auditor.

1.3 PROGRAM SUMMARY

Chapter 436 of the Laws of 1997 provides for New York State's Universal Prekindergarten Program, (UPK). Subject to the allocation of funding by the State of New York, the New York City Department of Education (NYCDOE) will continue to implement Half Day UPK services and for the first time offer Full Day UPK services for the 2007-10 school years. As such, the New York City Department of Education is required to collaborate with eligible early childhood providers and submit applications to the State Education Department. This represents a major step forward in creating an integrated early childhood education delivery system throughout New York City. The Universal Prekindergarten legislation recognizes that families need to access a variety of early childhood services, including Half Day, Full Day and Extended Day classes. In addition, the legislation acknowledges the expertise, diversity and wealth of existing community-based early care and education providers. It is expected that funding will be provided to serve all eligible four-year-olds when the Universal Prekindergarten Program is fully implemented.

The ultimate goal of the New York State learning standards is to create *Centers of Excellence* for prekindergarten services. A preschool program that reflects these standards of high quality developmentally appropriate instruction provides all children, including English language learners, children with disabilities and their non-disabled peers, with an important foundation that promotes the acquisition of skills in the four learning domains—social-emotional, physical, creative expression/aesthetic and cognitive development that includes language and literacy and mathematical and scientific thinking.

- The Universal Prekindergarten Program operates in all 10 Regions in public and non-public school settings. Achieving universal access to prekindergarten services depends on the powerful partnerships that link community-based organizations with the public schools.

NOTE:
UPK PROVIDERS MAY NOT CHARGE FAMILIES FOR UPK SERVICES.

QUALITY EARLY CHILDHOOD EDUCATION PROGRAMS

Two generally accepted approaches to measuring the quality of early childhood programs focus on process and structure. Research has consistently found that these indicators are related, and influence the quality of the educational experiences for children. Therefore, process and structural features, essential elements of a high quality early childhood program must be addressed together to achieve *Centers of Excellence* for prekindergarten services. The New York City Department of Education, in alignment with the New York State Education Department, promotes these essential elements of high-quality prekindergarten programs.

PROCESS QUALITY

Process quality emphasizes the actual experiences that occur in educational settings, such as adult-child interactions and the types of activities in which children are engaged. It also includes health and safety provisions, as well as available materials, relationships with parents and professional development.

Aspects of Process

- **Environment:** Environments for young children must be physically safe, socially enhancing, emotionally nurturing, and intellectually stimulating. The room is well-equipped, with sufficient appropriate materials and toys. This carefully designed setting promotes self-selection by children from a wide array of age appropriate materials. Both the classroom and the playground invite children to engage in active learning whereby they construct their own knowledge through interaction with adults, other children and materials. The equipment and materials that support this learning are easily adapted to the diverse interests, needs and abilities of children. Indoor and outdoor spaces and materials are easily accessible to all children and adults who may have special needs. Within this setting, the teaching team creates a climate of acceptance and they are attentive and responsive to individual children --- their interests, strengths, capabilities, culture, race and gender.
- **Curriculum:** The prekindergarten curriculum enables children to reach a deeper understanding of a subject when they can make meaningful connections across several disciplines. These connections are achieved through the implementation of inquiry-based projects or themes. Curriculum content is based on the observations of children's interests, questions children ask or shared experiences within the natural environment. Opportunities for art, music/movement, science, math, block play, social studies, sand, water, dramatic play and outdoor play are provided daily. Prekindergarten learning experiences are integrated across content areas and are augmented with a variety of multicultural and gender-free activities and materials that are adapted to meet the special needs of individual children, English language learners and children with disabilities. The teaching approach is well planned and intentional to help children cumulatively master more complex skills and knowledge. Communication occurs throughout the day, with mutual listening, talking/responding, and encouragement to use reasoning and problem-solving skills.

The primary focus of the curriculum is to emphasize the importance of developing the whole child, in four learning domains, including social-emotional, physical, creative expression/aesthetic, and cognitive development that includes language and literacy development, and mathematical and scientific thinking.

- **Assessment:** Assessment occurs within the context of everyday experiences. Beginning with the information and observations shared by family members as the child moves from home to the preschool, assessment continues as teachers and other staff members observe and record behaviors throughout the day. These systematically collected observations inform instructional practices about how to support children's strengths and abilities and provide the foundation for meaningful parent-teacher conferences about a child's progress. A research-based assessment tool with a clear protocol that measures children's progress in all learning domains is critical.
- **Family Involvement:** Family members play a critical role in supporting growth and development of their children. In early childhood programs, families are encouraged to be involved in all aspects of the program—planning, implementation, and evaluation. The family involvement activities include, but are not limited to, parent meetings, classroom participation, training sessions, parent-teacher conferences, weekly communication with other families and informal gatherings. Families are encouraged to share their ideas, interests and concerns to support their child's development and to enhance prekindergarten services. To promote and maintain meaningful family involvement experiences, materials are written in the primary languages of the families, and translators, where ever possible, are provided for family members who speak languages other than English.
- **Comprehensive Services:** Comprehensive services are an integral part of an effective early childhood program. These services are designed to build upon the strengths and alleviate the needs of young children and their families. Comprehensive services include health services, physical examinations and primary prevention, vision and hearing screening, nutrition services, social services and counseling. Services in accordance with Education Law section 4410, for preschool children with disabilities, shall be integrated into the program and provided in accordance with the needs specified in a child's Individualized Education Program (IEP). Furthermore, comprehensive services in the child's home language must be provided for children who come from homes where the predominant language spoken is other than English.
- **Transition and Continuity:** In order for children to move smoothly from home to preschool and through the early elementary grades, there must be similarities in goals, philosophy and expectations, for children, families, and staff. Any special needs of children should be provided within the early childhood setting to reduce the fragmentation of services and to facilitate inclusion. Families are to be encouraged to

participate in all aspects of prekindergarten. Furthermore, it is critical that all prekindergarten providers ensure curriculum continuity through the implementation of a strategic plan that promotes articulation with their participating collaborators.

- **Professional Development:** Professional development services, specifically geared towards early childhood education are an essential component of high-quality developmentally appropriate practices. These services must be rigorous, content relevant, organized, strategic, as well as sustained throughout the year to ensure the effective implementation of standards-based developmentally appropriate prekindergarten instruction. Reflecting best available research and practice in teaching, learning and leadership, the professional development activities are focused on areas related to *process quality*, such as teacher-child interactions, child assessment, early literacy, mathematical and scientific learning, English language learners, students with disabilities, music/movement, the arts, family involvement, physical education, social studies, social and emotional development, the *Speaking and Listening Standards—Preschool to Grade Three*, and the *Prekindergarten Performance Standards*. Professional development shall be provided by the Region, in collaboration with the contracted early childhood community-based organizations, to ensure that the teaching staff and administrators are provided with information that strengthens overall program implementation in terms of instruction, assessment, family involvement, support services, transition and continuity. A minimum of four (4) professional development days for staff must be provided each year.

STRUCTURAL QUALITY

The second way to measure quality is to review the *structural characteristics* of the program, such as adult-child ratios, class size, qualifications and compensation of teachers and staff, and square footage. Structural features are frequently regulated through state/city licensing requirements.

Aspects of Structure

- **Group Size and Adult-Child Ratio:** The nature and needs of young children require consistent care and attention. The younger the children, the smaller the group and the lower the adult-child ratio. To ensure that programming is individualized and appropriate to their age, there are two adults available for each group of 18 children; the adults include a certified teacher and a paraprofessional (teacher assistant/teacher aide) working together. Class sizes of 19 or 20 prekindergarten children require a certified teacher and two paraprofessionals (teacher assistant/teacher aide).

Group Family Day Care: No residence may have more than one program per home where the license began after March 1, 2002. Residences where the program's licenses began before March 1, 2002 shall be limited to a maximum of 10 children per program, including

school age children, at any one time. Each program within such a residence may have no more than 10 children at any one time.

Bilingual Classes: When there are 15 children who are English language learners, and the children at the identified site speak the same language, a bilingual class shall be formed. When a provider does not have a sufficient number of children who speak the same language to form two sessions (A.M. and P.M.), one bilingual session (either an A.M. or a P.M. session) may be formed. It is required that instruction be provided by a licensed or certified bilingual early childhood teacher. The teacher must be able to speak the native language of the children.

In the absence of a certified bilingual early childhood teacher, a monolingual certified teacher should be paired with a bilingual teacher assistant/teacher aide. If this can not be achieved a certified English as a Second Language (ESL) teacher must be provided. All bilingual and ESL instruction must follow New York City Department of Education standards and the principles of bilingual education, including, but not limited to, developing a strong foundation in the native language.

- **Staff Qualifications:** The critical relationship between staff experience, high quality training, commensurate compensation and the effectiveness of a program is well documented. Staff, teachers, social workers, and administrators, must have in-depth knowledge of child development and how young children learn. As of September 2007, all teachers providing instruction in the Universal Prekindergarten Program must have New York State certification valid for service in the early childhood grades (www.highered.nysed.gov/cert) A bilingual certification extension or license is required when instruction is provided to students who are English language learners. In the absence of a certified bilingual early childhood teacher, a monolingual certified teacher should be paired with a bilingual teacher assistant/teacher aide who speaks the children's native language. If this can not be achieved a certified English as a Second Language (ESL) teacher must be provided. A special education certification and/or license is required where instruction is provided to students who are classified as needing special education services. A social worker is certified as a social worker. A teacher assistant/teacher aide providing support in a prekindergarten classroom shall have a high school diploma and six hours of college credit in a related field pursuant to New York State regulations. .
- **Leadership and Administrative Supervision:** The leadership articulates the prekindergarten philosophy to parents, staff and the community, and serves as a source of support for staff and families by facilitating ongoing opportunities for learning and development. Alongside these responsibilities, the supervisor continually assesses program quality, institutes measures of accountability to strengthen the instructional practices and promotes curriculum alignment with the feeder schools.

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- **Space:** The early childhood classroom is a minimum of 30 square feet per child (540 square feet for 18 children) of wall to wall useable space. Bathroom facilities are within the room or readily accessible for young children. Large-muscle room (75 square feet per child) and/or outdoor space is provided. Space, equipment and furniture shall be provided and maintained in a state of good repair and sanitation. Every early childhood provider must secure and identify a facility that meets the following requirements:
 - Americans with Disabilities Act compliance
 - Fire and safety building codes compliance
 - The City of New York Department of Health and Mental Hygiene Bureau of Day Care Article 47 compliance and any pending revisions
 - A minimum of 30 square feet per child
 - Outdoor play area of at least 75 square feet per child or a play area within walking distance of the site is provided
 - Office space and kitchen facilities

Documentation of compliance with these regulations must be maintained on file at the site.

SECTION 2 A. MINIMUM QUALIFICATIONS

All proposals received on or before the proposal due date and time and at the location specified in the Request for Proposals, will be evaluated to determine whether or not they meet the following Minimum Qualifications:

2.1 A minimum of 24 months experience in providing the services proposed/requested prior to submission of this RFP as one of the following types of providers:

TYPE OF PROVIDER	QUALIFICATION
Child Care Center	Current NYC Department of Health and Mental Hygiene (“DOHMH”) Day Care Services Permit
Family Day Care	Current Early Childhood Teacher Certification NYS Office of Children and Family Services Family Day Care Registration
Group Family Day Care	Current Early Childhood Teacher Certification NYS Office of Children and Family Services Group Family Day Care License
Head Start	Current NYC DOHMH Day Care Services Permit
Nursery School	Current NYS Education Department approval Current NYC DOHMH Day Care Services Permit
Preschool Special Education	Current NYS Education Department approval Current NYC DOHMH Day Care Services Permit
Religious Only, NPR (No Permit Required)	Current NYS Education Department approval Letter from NYC DOHMH indicating NPR status
Provide Supporting Documentation	

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- 2.2 A current and valid license, letter and/or permit issued by either the DOHMH or the NYS Office of Children and Family Services. Submit the applicable license, letter, permit, and/or registration for your site:
- DOHMH Day Care Services Permit
 - NYS Office of Children and Family Services Group Family Day Care License
 - NYS Office of Children and Family Services Family Day Care Registration
 - DOHMH No Permit Required Letter
- 2.3 Current and valid Insurance Certificate indicating the policy number; start and expiration dates. If awarded the provider must submit a certificate of insurance naming the City of New York and the NYCDOE as additional insureds.
- 2.4 Current and valid Worker's Compensation Certificate indicating the certificate number along with the start and expiration dates.
- 2.5 Current vendor's facility must be located in the regional boundaries of the Region in which they are submitting their proposal. If a vendor has multiple facilities in different Regions, then a vendor must submit a separate proposal to each Region.
- 2.6 Letters of reference from at least three (3) funding sources who are parents/organizations/public/private agencies or foundations that have either funded or purchased services from the provider, or parents of former students who did not pay the provider directly (i.e. paid for by Head Start, ACS/CCHS, etc.).

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

B. EXCEPTION TO THE MINIMUM QUALIFICATIONS

NYCDOE will review a proposal for a UPK site that does not have the required documentation **only if** the organization demonstrates an ability to have a current license, letter, permit, and/or registration and a current and valid Certificate of Occupancy, and a current and valid Certificate of Insurance for that site by May 1, 2007. A UPK contract award will be contingent upon the issuance of the above documentation, and a site visit by the Regional staff. NYCDOE reserves the right to award a contract to a site that is located in a geographic area that has been identified as being underserved.

(If NYCDOE reviews your proposal without an applicable license, letter or permit (See 2.2 above), then your organization has until May 1, 2007 to submit a copy of the current and valid Insurance Certificate.)

PLEASE NOTE: PREFERENCE WILL BE GIVEN TO FULLY LICENSED/PERMITTED PROGRAMS.

SECTION 3 SCOPE OF SERVICES

Research indicates that high-quality programs provide learning experiences that are grounded in children's interests and that are developed around learning in several disciplines. High quality teaching reflects the knowledge that young children are active learners, drawing on direct physical and social experience as well as culturally transmitted knowledge to construct their understanding of the world around them.

The successful Proposer is required to provide high-quality, standards-based services (identified in Section 3) that are designed to promote school achievement for all students. Services should:

- Involve the entire educational community of children, families and staff.
- Provide family members with information and concrete strategies necessary to foster optimal early childhood education.
- Employ the resources of the school system in strategic ways.

Proposers should be familiar with the:

1. Prekindergarten Performance Standards of the New York City Department of Education, 2003. Applicants may purchase copies by contacting the Office of Instructional Publications at 131 Livingston Street, Brooklyn, NY 11201, Christopher Sgarro, Director
2. Eight Essential Elements of Effective Early Childhood Education and the Preschool Planning Guide: Building a Foundation for Development of Language and Literacy in the Early Years of the New York State Education Department. Applicants can locate this document on the NYSED website at <http://www.emsc.nysed.gov/ciai/pub/presch2pdf>
3. Social-Emotional Responsive Instructional Practices
4. Developmentally Appropriate Practice in Early Childhood Programs and Learning to Read and Write by the National Association for the Education of Young Children (NAEYC)
5. Speaking and Listening for Preschool Through Third Grade, New Standards by the National Center on Education and the Economy and the University of Pittsburgh

The goal of the Universal Prekindergarten Program is to significantly improve learning in prekindergarten using high-quality standards-based developmentally appropriate practices.

3.1 The following are mandatory for all proposals:

The successful Proposer shall be required to perform all of the following services:

Implement all aspects of a high-quality standards-based developmentally appropriate program including curriculum and instruction, environment, family involvement, professional development, assessment, comprehensive services, transition and continuity. Implement all the structural qualities that relate to group size, adult-child ratio, staff qualifications, leadership and supervision, and space.

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- 3.2 Evaluate the year's work based on evidence of:
- Growth in student progress
 - Increase in parent involvement
 - Increase staff knowledge and implementation of effective standards-based developmentally appropriate practices
 - Improvement in program quality.
- Proposers will:**
- 3.3 Provide a high-quality, standards-based developmentally appropriate instructional program for prekindergarten children. The instructional program integrates the four learning domains - social-emotional, physical, creative expression/aesthetic and cognitive development that includes language and literacy and mathematical and scientific thinking.
- 3.4 Provide an instructional program that is emotionally responsive to children--helping children to make bridges between the world of home and the world of school and community.
- 3.5 Provide an instructional program that incorporates gross motor, fine motor and spatial orientation development through daily physical activity to ensure health and well-being.
- 3.6 Demonstrate the ability to assess and support the various needs of all students including English language learners, students with disabilities and their non-disabled peers.
- 3.7 Provide a carefully planned prekindergarten learning environment that validates children's play through a broad range of materials and open-ended activities that provide opportunities for talking, verbal exchanges, thinking, listening, read alouds, story telling, painting, drawing, writing, dramatic play, block building, outdoor play, cooking experiences, instructional field trips, and small/whole group discussions.
- 3.8 Provide instructional practices that demonstrate:
- High and clear expectations for all students
 - Active student involvement
 - Accountable talk by teachers and students
 - Students making choices
 - Recognition of individual student accomplishment
 - Student self-monitoring and managing their learning
 - Recognition of authentic student work
- 3.9 Provide an integrated curriculum that includes language and literacy, math, science, social studies, art and music. The classroom promotes:
- Print rich environment with posted job, attendance and name charts, daily schedules, recipes, pictures, posters, graphs, labels and children's work
 - Teacher modeling speaking, listening, reading and writing standards-based strategies throughout the day

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- Multiple opportunities for students to practice and apply skills taught within various settings throughout the day
- Daily read alouds, in small groups, by adults to promote interactive discussions and activities in all learning centers
- Shared reading opportunities for children to respond to predictable books and model retelling of story
- Evidence of reading a variety of literary genres such as nursery rhymes, poetry, song, picture, concept, story books, etc.
- Evidence of beginning independent reading of wordless books
- Evidence of language experience and shared writing by teacher
- Evidence of dictated writing of children's thoughts, feelings, and needs
- Evidence of drawing, painting, and beginning writing by children
- Evidence of phonemic awareness, beginning phonics instruction by reciting nursery rhymes, poems and singing songs
- Evidence of language and vocabulary development of children through their social conversation, imaginative discourse, play dialogues and retelling of stories
- Evidence of children's development of alphabetic knowledge using alphabet puzzles, making play dough and sandpaper letters, finger painting
- Evidence of children's development of book and print concepts
- Evidence of discourse skills development, (turn-taking and social interaction), through meaningful learning conversations with peers and adults
- Multiple opportunities for students to use appropriate mathematical, scientific, artistic and musical language
- Engaging math, science, social studies, art and musical activities occur daily in learning centers
- Evidence that the teacher facilitates mathematic and scientific activities with individual students and in small groups to build community
- Established learning centers – blocks, dramatic play, sand and water, art, music, manipulatives, science – that are clearly defined, labeled, and accessible to students and contains appropriate manipulatives and materials, such as table blocks, related literature, measuring equipment, magnifying glasses, etc.
- Teacher and student generated inquiries, real life situations and problem solving activities to promote opportunities to explore, discover and foster discussion
- Evidence that the culture and language of children are appreciated and reflected in the displays of artifacts in learning centers

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- Classroom arrangements in a variety of settings –whole and small group, peer and individual – that promotes a sense of community.
- 3.10 Provide in collaboration with the Region, professional development activities that are aligned with the Chancellor’s goals and objectives and focused on all learning domains as indicated in the Prekindergarten Performance Standards. A minimum of four (4) professional development days for staff must be provided each year.
- 3.11 Provide a UPK calendar equivalent for the one hundred eighty (180) days of program operation, of which student instruction will be a minimum of 176 days and a minimum of four (4) days will be designated as professional development for staff. The four (4) professional development days may be non-attendance days for students. Providers will not be reimbursed for services provided on Saturday, Sunday and on the following legal holidays when school is not in session: Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, New Year’s Day, Dr. Martin Luther King, Jr. Day, Presidents’ Day and Memorial Day.
- 3.12 Provide a schedule of the UPK program hours for each proposed Component.
- 3.13 Provide meals in a family style environment that is conducive to interaction between staff and children, post and distribute menus to families and print menus in the primary language of the families.. If a universal prekindergarten program operates programs for less than three hours, it shall provide a nutritional meal and/or snack. Programs operating more than three hours shall provide appropriate meals and snacks to ensure that the nutritional needs of the children are met. Meals shall be provided in an environment conducive to interaction between staff and children and at a time appropriate to meet the children's needs and provide sufficient time for eating and interaction. (State Regulations: 151-1.3) In accordance with the Child and Adult Care Food Program Regulations, meal time is to be scheduled to meet the needs of the children.
- 3.14 Provide a safety plan that is maintained on site. Upon award of a Universal Prekindergarten contract, provider must complete the New York City Department of Education’s Safety Plan; located at: <http://schools.nyc.gov/NR/ronlyres/6E430D1B-7F0A-4F40-8693-3726EA6E0436/14100/safetyplan.doc>
- 3.15 Program leadership, the Director, the Education Director and/or Supervisor-in-Charge are to regularly review the Safety Plan, the evacuation procedures, notification of parents/emergency contacts, handling and administration of medication, issuance of first aid kits, fire safety and emergency communication equipment. In addition, well defined policies are to be established regarding the supervision of children beyond the program’s regular hours of operation or the

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release of children to designated emergency caregivers when parents are late. These policies and all previously identified areas are to be regularly reviewed and annually communicated in writing to both families and staff.

- 3.16 Demonstrate the ability to document and maintain student records. Upon award of a UPK contract, the provider as required will document and maintain during the school year the Department of Education's Cumulative Record Card. At the end of the school year provider will transfer completed records to the receiving school, as appropriate. The document must contain at a minimum:
- Home address and telephone number
 - Work address and telephone number of parent/guardian
 - Emergency contact person(s)
 - Attendance
 - Parent-teacher conference(s)
 - Immunization status
 - Medical exam status
 - Referrals
 - Home Language Survey
 - Dated samples of children's work
 - Other pertinent information about the child's history
- 3.17 Demonstrate the ability to assess and determine the developmental baseline and progress of children participating in the program. The assessment of student learning must include:
- Evidence that there is developmental screening.
 - Evidence that there is ongoing observation and assessment to determine student abilities, interests and growth that benchmark their progress
 - Evidence that observation results inform instruction
 - Evidence of teacher conferencing with children and families.
 - Evidence of collections of student's work that contain standards-based materials
 - Evidence of teachers using checklists
 - Evidence of teacher-made assessments such as observations, anecdotes
- 3.18 Demonstrate the ability to maintain an e-mail account. Upon award of a UPK contract, every vendor must maintain an Internet connection; a high-speed modem with no less than a minimum of 56 gigabytes. All providers are required to (a) maintain an accessible email account that is reviewed daily and to (b) provide their email address to the Region's Office of Early Childhood Education, the Region's Contract Administration Officer and to the Supervisor of UPK in the Division of Contracts and Purchasing (DCP). If provider changes their email address they must notify the Region's Office of Early Childhood Education, the Region's Contract Administration Officer and the DCP's UPK Supervisor of said change.

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- 3.19 Demonstrate the ability to provide an early childhood classroom that is a minimum of 30 square feet per child (540 square feet for 18 children) of wall to wall useable space. Child-sized bathroom facilities are within the room or readily accessible for young children. Outdoor play area of at least 75 square feet per child or a play area within walking distance of the site is provided. Space, equipment and furniture shall be provided and maintained in a state of good repair and sanitation.
- 3.20 Demonstrate an ability to employ staff that has an in-depth knowledge of child development and how young children learn.

- Security Clearance

All Providers

Employees and any independent contractors engaged in the performance of this Agreement, including without limitation, directors, administrators, teachers, teacher assistants, teacher aides, security, custodial and food services staff or any other individual who has unsupervised contact with students or is providing services on site on more than an occasional or intermittent basis, ("Staff"), are subject to the security clearance procedures set forth in the agreement. Provider shall comply with all rules and directions regarding security clearance procedures that may be issued by the Board or its designee during the term of the Agreement. Fingerprinting and clearance of staff and execution of a Release, where applicable, is a condition precedent to each staff member's employment.

All staff are subject to security clearance procedures administered by the NYCDOE including, without limitation: 1) fingerprinting by the New York City Department of Investigation ("DOI") or the Board; 2) review of criminal conviction record; and 3) inquiry to the Statewide Central Register of Child Abuse and Maltreatment ("SCR").

DOHMH Licensed Providers Only

Pursuant to DOHMH requirements, Provider's staff must be fingerprinted by the Department of Investigation ("DOI") located at 49-51 Chambers Street, Room 730, New York, NY 10007.

If a member of Provider's staff has been fingerprinted by the DOI after March 19, 1999 pursuant to an Agreement between the Board and another Provider for the provision of UPK services, said staff member does not have to be fingerprinted again. However, the current Provider must add said staff member's name and other identifying information to the UPK Security Clearance Roster and advise DOI of the change of employment. Said staff member must sign the Release.

No Permit Required (NPR) Providers and Group Family Day Care (GFDC) Providers

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Pursuant to Board requirements, Staff for NPR and GFDC Providers must be fingerprinted by the Board located at 65 Court Street, Room 102, Brooklyn, New York 11201.

If a Provider hires a staff member who had been fingerprinted by the Board after July 1, 1990 pursuant to an Agreement between the Board and another UPK Provider for the provision of UPK services, the staff member does not have to be fingerprinted again. However, the Provider must add the staff member's name and other identifying information to the UPK Security Clearance Roster

3.21 Demonstrate an ability to maintain on file appropriate personnel and fiscal documentation. Upon award of a UPK contract, Provider must document and maintain on file:

- Medical information
- Department of Investigation information
- Prekindergarten Instructional Review
- Mid-Year and End-Year Fiscal Reports and a yearly fiscal audit

3.22 Demonstrate the ability to adhere to all regulations regarding program implementation. Upon award of a UPK contract, Provider must adhere to monitoring by the State, the Central NYCDOE and the Region. Monitoring includes the responsibility for ensuring that funds are appropriately spent and children are receiving quality instructional services. Program monitoring will include, but is not limited to, the following:

- Site visits
- Staff interviews
- Parent interviews
- Prekindergarten Instructional Review and/or the Department of Education's selected assessment tool
- Review of the Mid-Year and End-Year Fiscal Reports
- Yearly fiscal audit

3.23 Demonstrate the ability to adhere to the Generally Accepted Accounting Principles (GAAP).

3.24 **UPK PROGRAM COMPONENTS**

Subject to the allocation of additional funds, the UPK program services will be offered in two Components as follows:

Component 1: Half Day UPK Program:

Provide a schedule of the UPK program hours. Funding for this component of the Universal Prekindergarten Program supports 2.5 hours of service per day, five days per week, Monday to Friday.

Component 2: Full Day UPK Program:

Provide a schedule of the UPK program hours. Funding for this component of the Universal Prekindergarten Program supports 6

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hours and 20 minutes or 31 hours and 40 minutes per week Monday-Friday with no single day extending more than 7 hours.

SECTION 4 PROPOSAL SUBMISSION REQUIREMENTS

Your proposal must address all of the Scope of Services listed in Section 3, above. Using Appendices E1, E2, C1, C2, C3, and C4 organize your proposal in the following four sections:

If you are applying for Component 1 and Component 2, you must submit one comprehensive program plan, organizational capacity, and demonstrated effectiveness.

You must submit a separate program schedule and fiscal/pricing plan for each Component for which you are applying. Each service will be evaluated and awarded independently.

It is important to recognize that funding for the Full Day program is uncertain. If you are interested in running a Half Day program, please include a separate program schedule and fiscal/pricing plan for Component 1. If we are unable to accommodate your proposal for a Full Day program we must have the referenced program schedule and fiscal/pricing plan in order for your program to be considered.

The following are mandatory for all proposals:

4.1 Program Plan

For each Component for which you are applying, the program plan must provide a description of the scope of services that includes Philosophy, Instructional Plan, Program Structure, Professional Development and Family Involvement Plan.

The narrative should reflect:

- Goals for implementing a high-quality Universal Prekindergarten program as described in the RFP. Each provider must demonstrate how their plan will meet the Universal Prekindergarten Program goals.
- Instruction that provides for four (4) learning domains of a child's development---social-emotional, physical, creative expression/aesthetic and cognitive development to promote the acquisition of knowledge, skills and the disposition for learning. The instructional plan must clearly articulate alignment to the New York City Department of Education's Prekindergarten Performance Standards
- Description of the services to be provided
- Description of ability to provide bilingual classes and special education integrated services, as needed
- Description of on-going student recruitment and enrollment procedures that are in compliance with the contractual agreement
- Description of curriculum strategies that demonstrate how young children learn and develop, such as:

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- ◆ Engages children in experiences which challenge their capabilities and learning styles
- ◆ Promotes instructional practices that allows sufficient time for exploration, investigation, and reflection on learning
- ◆ Enables children to apply concepts and skills across disciplines and provides opportunities for children to work independently or in small groups
- ◆ Emphasizes hands-on, inquiry-based learning experiences—a constructivist approach
- ◆ Offers alternative approaches that respond to children's individual needs and that build upon their strengths
- ◆ Promotes developmentally appropriate instructional practices that acknowledge and celebrate diversity
- ◆ Fosters learning activities, which are meaningful and relevant
- ◆ Emphasizes the process of critical analysis rather than completion of a product
- Operation hours are either Half Day or Full Day five days a week, Monday through Friday
- Program schedule for the children that include a typical day and a typical week (for example, a typical day may begin at 8:00 A.M. to 8:40 A.M. arrival, greetings, informal conversations, class meeting); sample menu showing what meals and snacks will be provided; state where the children will have their meals
- Describe all family involvement activities
- Describe continuity and transition activities that support the children, families and staff
- Describe the student disciplinary policy; address how you would handle the everyday as well as serious issues
- Provide a UPK calendar equivalent for the one hundred eighty (180) days of program operation, of which student instruction will be a minimum of 176 days and a minimum of four (4) days will be designated as professional development for staff. (Appendix C)
- All program plans must state that there is no religious worship, instruction, proselytizing or other religious activity during UPK hours.
- Describe how the internal monitoring system adheres to Generally Accepted Accounting Principles (GAAP). Budget forms should reflect proper accounting procedures and pro-rated expenses.

4.2 **Organizational Capacity**

In this section, you will show evidence of human, organizational, technical, and professional resources can support the proposed scope of services. Include, but do not limit to, the following:

- 4.2.1 An organizational chart depicting how the UPK program relates to your overall organization. If the submitting Proposer is an umbrella organization for other service providers (For example: Red Cross, United Neighborhood Houses), then submit the Proposer's name and the other organization names that fall under your umbrella.

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- 4.2.2 Resumes of key personnel who will be directly responsible for the Universal Prekindergarten Program, for example, Director, Educational Director, Teacher(s), Teacher Assistant(s), Teacher Aide(s), C.P.A., bookkeeper, etc. and where required, appropriate licenses and/or certificates.

PLEASE NOTE: If you are applying for Full Day, then the teaching staff must be consistent throughout the day.

- 4.2.3 Attach a floor plan for the proposed facility, as well as information regarding:
- Floor location
 - 30 square feet per child
 - Zoning usage
 - Sanitation facility
 - Current building use
 - Immediate three (3) block neighborhood
 - Description of the street and traffic pattern

4.3 **Demonstrated Effectiveness**

Providers shall include a narrative describing evidence of prior successful experience that is detailed and directly related to the proposed scope of services. The narrative shall include the following:

- 4.3.1 Details of your background and experience in providing 24 months of prekindergarten services prior to submission of this proposal.
- 4.3.2 Any experience working with the public schools, such as after-school programs, parent activities, professional development activities, inter-visitations, etc.
- 4.3.3 Letters of reference supplied as a minimum qualification will be used as an evaluation tool. Each reference must state the date(s), location(s), description of the service(s) provided and a contact person's name and phone number.
- 4.3.4 As applicable to your program:
- List any and all DOHMH notice(s) of violation issued in the past two years classified as "public health hazard" or "critical" **and any DOHMH orders to close your operation**
 - List any and all NYS Office of Children and Family Services notice(s) of violation issued in the past two years classified as "imminent" or "serious" **and any Cease and Desist Notices or Suspensions Notices and any Revocation Decision(s).**

4.4 **Fiscal/Pricing Plan**

For each Component that you select, Providers must submit a projected **annual** budget. The budget will be reviewed for the total **annual** cost associated with the operation of the Universal Prekindergarten Program. Expenses should include all costs for services or instructional materials that are provided to the Region's Universal Prekindergarten Program. NYCDOE will take into consideration in-kind contributions services that are

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provided (See Appendix C1). All Universal Prekindergarten projected **annual** expenditures must be outlined on Appendices C1, C2, C3, and C4. Provider can only charge for items indicated in the appendices.

Although this contract is for three (3) school years, with a two (2) year option to extend, at the discretion of the NYCDOE, the fiscal/pricing forms must represent the annual contract cost.

If you are selected, the NYCDOE reserves the right to review records used for your cost calculations that support your prices before entering into a contract with you.

4.5 **Site Visit**

No submission requirements. Site visit must reflect provider's Program Plan and Organizational Capacity.

4.6 **Vendex Forms**

Applicants are 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. The Vendor and Principal Questionnaires are located at and can be downloaded from the following website:

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

4.7 **CITY OF NEW YORK SUBSTITUTION FORM W-9: REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION FORM**

Applicants are required to submit a City Of New York Substitution Form W-9: Request For Taxpayer Identification Number & Certification Form. This form is located at:

<http://schools.nyc.gov/Offices/DCP/MostPopularClicks/OnLineVendor.htm>

Based on the number of Universal Prekindergarten Contracts expiring on June 30, 2007, the Department of Education expects to serve system wide approximately 13,000 children, annually from the awarded vendors. Therefore, when completing the pricing form, please estimate how many seats you have the capacity to provide annually.

SECTION 5 **PROPOSAL EVALUATION PROCESS** **EVALUATION PROCEDURE**

The Regions will review all proposals to determine if they meet all of the submission and Minimum Qualifications prescribed in this Request for Proposals. Proposals meeting these requirements will be evaluated and rated by a Regional Evaluation Committee applying the evaluation criteria described below. Site visits will be conducted by the Region. This is to determine whether the site reflects the Program Plan and Organizational Capacity that was described in the proposal. Provider may be required to make a demonstration/presentation of their services or submit additional written material in support of a proposal. Critical to the ongoing implementation and expansion of the Universal Prekindergarten Program

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is the level of funding provided by New York State, which at this time is not known.

The Evaluation Committee makes every attempt to match the submitted capacities of the highest rated community-based organizations with the NYCDOE's projected needs. However, the NYCDOE reserves the right to award vendors whose capacity exceeds the projected needs in case other contracts are terminated. NYCDOE also reserves the right to award vendors whose capacity does not meet projected needs in case many vendors receive low ratings.

NOTE:

We reserve the right to not award any vendor, regardless of score, if they are located in an oversaturated area.

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 a description of the scope of services that includes Philosophy, Instructional Plan, Program Structure (for each component you are applying), Professional Development, and Family Involvement Plan.	20 Points
Organizational Capacity	Evidence that the organization's human, organizational, technical, and professional resources can support the proposed scope of services.	20 Points
Demonstrated Effectiveness	Evidence of prior successful experience that is detailed and directly related to the proposed scope of services.	20 Points
Fiscal/Pricing Plan	The most reasonable, standardized price as calculated in Appendix C1, C2, C3, and C4 for each component for which you are applying.	20 Points
Site Visit	Site visit must reflect Program Plan, Organizational Capacity and Demonstrated Effectiveness. Site visit will be conducted by regional staff.	20 Points
	Total Maximum Points	100 Points

SECTION 6 PROPOSAL PACKAGE FORMAT

Each Proposal must be submitted in Microsoft Word '98 or a later version. Additionally, this RFP has forms for you to use in your proposal, Appendices E1, E2, C1, C2, C3, C4, C5, and C6 that **must** be downloaded from our website:

<http://schools.nyc.gov/Offices/DCP/Vendor/RequestsforProposals/Default.htm>. These forms are in Microsoft Word and Microsoft Excel. Qualified and interested vendors are invited to respond, provided they use these forms to submit responses to the appropriate region no later than **4:00 P.M. on February 5, 2007.**

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6.1 **Submission Requirements/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 disqualification. This list of submission requirements is to help Proposers insure that their responses to this RFP are complete.

6.2 **Proposal Form (Appendix E1)**

Please review each of the following sections and subsections to insure that you have completed and submitted all documentation below. Please be concise.

1. Company Information
2. Table of Contents
3. Proposal Cover Letter
4. Minimum Qualifications
5. Affirmation
6. Program Plan (Section 4.1) (Appendix E2)
7. Organizational Capacity (Section 4.2)
8. Demonstrated Effectiveness (Section 4.3)
9. Violations
10. Previous City Contracts
11. Fiscal/Pricing Plan (Section 4.4) **must** be entered in the Pricing/Charges Form included as a separate Excel File (Appendix C1, C2, C3, and C4)
12. Vendex Forms
13. W-9 Form
14. Exceptions and Deviations Form
15. Signature Page

6.3 Proposals must include page numbers. There is no specific limit on the number of pages applications may contain but **please be concise**.

6.4 Submit one (1) proposal stamped ORIGINAL, with signatures in **blue ink**, and four (4) photocopies. Please note: the hard copy of the RFP must contain the proposal form as well as the pricing form.

6.5 **NO videotapes, CDs, PowerPoint files, or samples of materials, will be accepted.**

6.6 All proposals should be placed in one envelope. The original should be labeled, "Original Proposal." Providers must submit a separate proposal to **each Region in which their facilities are geographically located.** The Chart below shows which districts belong to which Regions, as well as specific information for each Region:

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Region	CSD	Location Proposals are due	Due Date	Date Proposals Opened
1	9, 10	Joy Gentolia 1 Fordham Plaza, 8 th Floor Bronx, NY 10458	February 5, 2007 4:00 P.M.	February 6, 2007
2	8, 11, 12	Stacey Henry 1 Fordham Plaza, Room 851 Bronx, NY 10458	February 5, 2007 4:00 P.M.	February 6, 2007
3	25, 26, 28, 29	Michael Feder 30-48 Linden Place, Room 507 Flushing, NY 11354	February 5, 2007 4:00 P.M.	February 6, 2007
4	24, 30, 32	Richard Switach 28-11 Queens Plaza 4 th Floor North, LIC, NY 11101	February 5, 2007 4:00 P.M.	February 6, 2007
5	19, 23, 27	Pat Rodman Early Childhood Office 82-01 Rockaway Blvd. Ozone Park, NY 11416	February 5, 2007 4:00 P.M.	February 6, 2007
6	17, 18, 22	Patti Finn Universal Prekindergarten 5619 Flatlands Avenue Brooklyn, NY 11234	February 5, 2007 4:00 P.M.	February 6, 2007
7	20, 21, 31	Fred Mavaro 715 Ocean Terrace Staten Island, NY 10301 or Selma Barnabas 415 89 th Street Room 401 Brooklyn, NY 11210	February 5, 2007 4:00 P.M.	February 6, 2007
8	13, 14, 15, 16	Vaughn Shaw 131 Livingston Street, Room 503, Brooklyn, NY 11201	February 5, 2007 4:00 P.M.	February 6, 2007
9	1, 2, 4, 7	Katie Raab 333 7 th Avenue, Room 825 New York, NY 10001	February 5, 2007 4:00 P.M.	February 6, 2007
10	3, 5, 6	Robin Frasier 333 7 th Avenue, Room 825 New York, NY 10001	February 5, 2007 4:00 P.M.	February 6, 2007

6.7 Electronic Connectivity – Upon award of contract every vendor must maintain an Internet connection; a high-speed modem with no less than a minimum of 56k gigabytes. All providers are required to maintain an accessible email account that is reviewed daily and to provide their email address to the Regional Instructional Center, the Regional Operation

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Center, and the Department of Education Attorney. If Provider changes their email address they must notify the Regional Instructional Center, the Regional Operation Center, and the Department of Education Attorney of said change.

SECTION 7 REQUEST FOR PROPOSALS TIMETABLE AND GENERAL INFORMATION

7.1 REQUEST FOR PROPOSALS (RFP) TIMETABLE

PROPOSALS ARE DUE NO LATER THAN --

DATE: FEBRUARY 5, 2007

TIME: 4:00 PM

AT THE LOCATION LISTED IN SECTION 6.6 ABOVE.

Proposals received after the specified date and time will not be considered/accepted.

7.2 GENERAL INFORMATION

The Department of Education was restructured on July 1, 2003. The 32 community school districts are now organized into 10 Regional Instructional Divisions ("Regions"). A map showing the locations of the Regions is located on the Department of Education's web site located at: <http://schools.nyc.gov/Administration/Organization+of+the+DOE/ROC/?Page=map>

7.3 REQUESTS FOR CLARIFICATION AND ADDENDA

Any inquiry regarding this solicitation must be made in writing, with the exception being oral inquiries that are addressed at the Pre-Proposal Conference. **No phone calls will be accepted regarding this RFP. All written inquiries may be e-mailed to the following authorized contact person:**

**Maxine Needle
Universal Prekindergarten Supervisor
Division of Contracts and Purchasing
E-mail: mneedle@schools.nyc.gov**

The deadline for questions on this RFP is five (5) business days after the last pre-proposal conference

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

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7.4 Pre-Proposal Conference

A pre-proposal conference, at which vendors will have the opportunity to ask questions related to this RFP, will be held at each Region. Time and location is listed below.

Region	CSD	Pre-Proposal Conference Date and Time	Pre-Proposal Conference Location
1	9, 10	January 12, 2007 at 10:00 AM	1 Fordham Plaza, Room 838 Bronx, NY 10458
2	8, 11, 12	January 12, 2007 at 10:00 AM	1 Fordham Plaza, Room 838 Bronx, NY 10458
3	25, 26, 28, 29	January 10, 2007 at 9:15 AM	30-48 Linden Place, 4 th Floor Auditorium Flushing, NY 11354
4	24, 30, 32	January 9, 2007 at 9:00 AM	28-11 Queens Plaza 5 th Floor Conference Room, North Long Island City, NY 11101
5	19, 23, 27	January 8, 2007 at 9:00 AM	82-01 Rockaway Blvd Room 302 Ozone Park, NY 11416
6	17, 18, 22	January 17, 2007 at 9:00 AM	1780 Ocean Avenue Brooklyn, NY 11230
7	20, 21, 31	January 17, 2007 at 9:00 AM	1780 Ocean Avenue Brooklyn, NY 11230
8	13, 14, 15, 16	January 16, 2007 at 10:00 AM	131 Livingston Street Room 508 Brooklyn, NY 11201
9	1, 2, 4, 7	January 18, 2007 at 9:00 AM	Harlem Renaissance Technology Center 425 West 123rd Street New York, NY 10027
10	3, 5, 6	January 18, 2007 at 9:00 AM	Harlem Renaissance Technology Center 425 West 123rd Street New York, NY 10027

Specific questions concerning this RFP should reference the RFP by page and paragraph numbers. If possible, these questions will be answered at the pre-proposal conference and additional questions may be submitted orally at the conference.

Questions should be submitted in writing prior to the pre-proposal conference to:

Maxine Needle
Universal Prekindergarten Supervisor
Division of Contracts and Purchasing
E-mail: mneedle@schools.nyc.gov

7.5 Incurring Costs

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

7.6 Oral Presentations/Demonstrations

The NYCDOE may require Proposers to give oral presentations after the Closing Date regarding their proposals. At such presentations, Proposers may be required to clarify aspects of their proposal through demonstrations or exhibitions, as requested by the NYCDOE.

7.7 Negotiations

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

7.8 Withdrawal Of Proposals

After the opening of proposals, a request by a Proposer to the New York City Department of Education for consent to the withdrawal of their proposal, because of an error made by said Proposer, will be considered only under the following terms and conditions:

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

Whenever any Proposer requests the consent of The New York City Department of Education to withdraw their proposal, The New York City Department of Education may grant or reject such request in any case which it deems just and proper. This request shall be made and such consent to withdraw shall be accepted by the Proposer upon the expressed condition that said Proposer shall be excluded from proposing again for the re-advertisement of proposals for the same item or proposal should no award be made. Should any Proposer request the withdrawal of more than one proposal in any twelve (12) month period, they shall be disqualified from proposing for The Department of Education work for a

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period of one (1) year from the date of the second request. Prior to the RFP close date, proposals may be withdrawn without repercussions.

Any request for a Withdrawal of proposal within three (3) business days must be accompanied by a certified check in the amount of \$250.00 made payable to The New York City Department of Education, Chief Administrator of Professional Services, to defray the cost of the processing. Such fees are non-refundable.

Following the three (3) business days after the proposal opening, a Proposer may not withdraw their proposal before the expiration of ninety (90) calendar days from the date of proposal opening. A Proposer may withdraw their proposal after that date only if they state such intent in writing prior to the mailing by The New York City Department of Education of a Purchase Order, Notice of Award, or Acceptance of Bids.

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

7.9 **Terms and Conditions**

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

7.10 **Contract Award**

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

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

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

7.10.2 Completion and submission of the Affirmation Sheet.

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7.10.3 Submission of an appropriate Certificate of Insurance (with the NYCDOE additionally insured), Worker's Compensation and Department of Health Certificate.

7.11 Termination of Contract

Any contract(s) resulting from this RFP 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.

SECTION 8 CONTRACT TERM

The contract(s) resulting from this RFP will be for a term of 3 years with a two (2) year option to extend at the discretion of the NYCDOE.

SECTION 9 TYPE OF CONTRACT

This RFP may result in the award of one or more limited 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 unit price for a particular service or series of services multiplied by 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 10 PROPOSER CHECKLIST

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

- Request for Proposals
- Proposal Form (Appendix E1, Microsoft Word File)
- Program Plan (Appendix E2, Microsoft Word File)
- Organizational Capacity
- Demonstrated Effectiveness
- Fiscal/Pricing Plan (Appendix C1, C2, C3, and C4, Microsoft Excel File)

To respond to this proposal:

- Carefully review the Scope of Services for this RFP before completing the response sections.
- View the Terms & Conditions (Appendix B) in this document. Some of the Terms & Conditions may have changed since the last RFP.
- Attend the Pre-Proposal Conference.

APPENDIX A1

RFP _____ Number _____ and _____ Title: _____

Proposal Opening Date: _____

NO-PROPOSAL RESPONSE FORM

PLEASE COMPLETE AND RETURN THIS FORM IF YOU WILL NOT BE SUBMITTING A PROPOSAL BUT WISH TO REMAIN ON THE NEW YORK CITY DEPARTMENT OF EDUCATION'S BIDDERS LIST.

The preparation and mailing of REQUEST FOR PROPOSALS is time consuming and expensive. In instances where proposers fail to respond or notify the New York City Department of Education of their future intentions, the preparation and mailing of the Request for Proposals package represents an unnecessary expense to the New York City Department of Education. Feedback from proposers is also encouraged so that any reasons for not proposing may be evaluated with the intention of improving future solicitations for this commodity or service in the hopes of encouraging and expanding the field of competition.

All proposers who respond with a "No Response" response or choose not to propose are requested to provide the information below and return this form in time for the proposal opening.

REASONS FOR NOT PROPOSING AT THIS TIME:

DO YOU WISH TO RECEIVE REQUESTS FOR THIS PARTICULAR PRODUCT OR SERVICE IN THE FUTURE? YES NO

PROPOSER NAME AND ADDRESS:

SIGNED: _____ **TITLE:** _____ **DATE:** _____

APPENDIX A2

INSURANCE

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

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

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

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

WORKERS' COMPENSATION INSURANCE

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

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

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

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

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

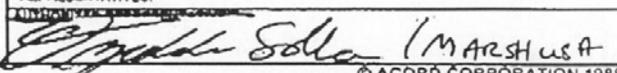
In the event there is a loss incurred as a result of any of the above, reimbursement for claims submitted shall be on a dollar for dollar basis for the cost incurred by the Department for either the loss of services, repair, restoration or replacement, whichever is applicable. This coverage may be a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

ACORD TM CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YY)		
PRODUCER MARSH USA, INC 1166 AVENUE OF THE AMERICAS NEW YORK, NEW YORK 10038		Serial #	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW			
INSURED CITYWIDE CENTRAL INSURANCE PROGRAM 220 CHURCH STREET- ROOM 321 NEW YORK, NEW YORK 10013 01-05350 Early Childhood Education		INSURERS AFFORDING COVERAGE		NAIC#		
		INSURER A: ACE AMERICAN INSURANCE COMPANY				
		INSURER B: INDEMNITY INS. CO. OF NORTH AMERICA				
		INSURER C:				
		INSURER D:				
		INSURER E:				
COVERAGES THE 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 POLICES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
TYPE	CLASS	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-SUBJECT <input type="checkbox"/> LOC	HDOG19905664	07/01/04	07/01/05	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ INCL GENERAL AGGREGATE \$ 15,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	XSLG19905627	07/01/04	07/01/05	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 5,000,000
B		WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	WLRC43979802	07/01/04	07/01/05	EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000
DESCRIPTION OF OPERATION/LOCATION/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS AGENCY FOR CHILD DEVELOPMENT FUNDED DAY CARE PROGRAM. CITY OF NEW YORK DEPARTMENT OF EDUCATION AND THE CITY OF NEW YORK ARE NAMED AS ADDITIONAL INSURED ONLY AS RESPECT THE CHILDREN PLACED THROUGH THE ACD PARTICIPATION IN THE UNIVERSAL PRE-KINDERGARTEN PROGRAM AT 65 Court Street Brooklyn, NY 11201						
CERTIFICATE HOLDER DEPARTMENT OF EDUCATION CITY OF NEW YORK 52 CHAMBERS STREET NEW YORK, NY 10007			CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.			
			 (MARSH USA)			

APPENDIX A3

PRICE CERTIFICATION CLAUSE (REVISED 11/13/78)

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

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

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

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

APPENDIX A5

MINORITY AND WOMEN OWNED BUSINESS ENTITIES PARTICIPATION

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

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

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

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

Recognition of the efforts above 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.

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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)

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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

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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.

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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, reletting 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

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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.

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- 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.

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- (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

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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 Chancellor, nor any board members, 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

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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. 12/12/02)

32. Indemnification

The Contractor shall protect, indemnify and hold harmless the Board and the City from any and all claims, suits, actions, costs and damages to which the Board and the City 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. (12/19/02)

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 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. (Rev. 12/12/02)

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

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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. For Contractors with stock that is publicly traded, compliance with this subparagraph C is the obligation of Board of Education employees and officers. (1/16/03)

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

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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.

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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 there under.
- 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 hereunder, 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

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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

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- (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;

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- (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.

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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

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- (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;

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- (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) Give, or offer to give, money, gifts or other benefit(s) to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices;
- (6) 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% of 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

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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 D

UPK INVOICE/ATTENDANCE FORM FOR CONTRACTED PROVIDERS

DIRECTIONS: PLEASE COMPLETE THIS FORM ONLINE, PRINT AND SEND TO THE DIRECTOR OF EARLY CHILDHOOD FOR YOUR REGION TO ENSURE PROMPT PAYMENT.

SCHOOL INFORMATION			
Region		District	
Provider's Name		Class Number	
Provider's Address			
Contact Name		Contact Phone #	

INVOICE INFORMATION			
Invoice Date		Month and Year of Service	
Contracted Cost Per Child			
# of Students			
Total Contract Amount		Total Invoice Amount	

ENROLLMENT INFORMATION			
Total Students enrolled at beginning of the month		Total Students enrolled at end of the month:	
New Students Enrolled During Month:		Interclass Transfers:	Number Discharged During the Month:

STUDENT INFORMATION							IF APPLICABLE PLEASE ANSWER	PLEASE CHECK ONE		
#	Name	ID#	Date of Birth	Initial Enrollment Date	Days enrolled for the month	Days in Attend.	Inter Class Transfer	Discharge Date	UPK Only	UPK w/ add'tl services
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										

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11											
12											
13											
14											
15											
STUDENT INFORMATION							IF APPLICABLE PLEASE ANSWER		PLEASE CHECK ONE		
#	Name	ID#	Date of Birth	Initial Enrollment Date	Days enrolled for the month	Days in Attend.	Inter Class Transfer	Discharge Date	UPK Only	UPK w/ add'l services	
16											
17											
18											
19											
20											

I hereby certify the accuracy of this invoice to the New York City Department of Education (NYCDOE). I acknowledge that all persons working under the UPK contract, who meet the definition of staff, have been fingerprinted and cleared as identified on the UPK Security Clearance Roster. I further acknowledge that I have a continuing duty to comply with the terms of the security clearance section of the UPK contract and update the Roster as new staff members are hired.

Provider's Early Childhood Supervisor's signature and date		NYCDOE Director of Early Childhood signature and date	
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END OF DOCUMENT



THE DIVISION OF CONTRACTS AND PURCHASING