

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



STANDARD FORM OF CONTRACT PROPOSAL

Serial No. B0559

DISPLAY & CLASSIFIED ADVERTISING & MARKETING SERVICES

Sealed bids will be received by the
Director, Division of Contracts and Purchasing, The New York City Department of Education, 65
Court Street, 12th Floor, Room 1202, Brooklyn, New York 11201 up until

5:00 P.M., June 3, 2008

NO LATE BIDS WILL BE ACCEPTED

PRE-BID CONFERENCE ON May 20, 2008 at 2:00 PM.

65 Court Street, 12th Floor Conference Room, Brooklyn, New York 11201

**BIDS WILL BE PUBLICLY OPENED AND READ
on June 4, 2008 at 11:00 A.M.**

**Only duly authorized representative of the company shall sign this proposal to
The New York City Department of Education.**

Name of Bidder _____

Address of Bidder _____

_____ Zip _____

Telephone No. _____ Fax _____

E-Mail Address: _____

Federal ID No. _____

Division of Contracts and Purchasing
65 Court Street • Brooklyn, New York 11201
Telephone: (718) 935-2300 * Fax: (718) 935-2155

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GENERAL INSTRUCTIONS TO BIDDERS

1.1. INTENT AND SCOPE

This is a requirements contract and is intended to cover, during the period of the contract, the requirements for display and classified advertising and marketing as listed in the schedules herein for all the schools and offices etc. under the jurisdiction of the Board of Education of the City of New York.

1.2. CONTRACT

The advertisement for furnishing and delivering the supplies and/or services, proposal for bids, instructions to bidders, bid specifications, schedules, and agreements approved by the Board of Education are and shall be a part of this contract. In case of variance between the specifications, bid and contract, the contract shall be controlling.

1.3. CONTRACT PERIOD

The proposed contract is for the period of 5 years commencing on July 1, 2008 or with the execution of the contract (whichever is later), by the Board of Education and will expire on June 30, 2012, or 5 years from the date of execution (whichever is later). The contract may be terminated by the successful bidder(s) receiving award of the contract on a yearly basis, provided written notification is delivered by mail with confirmation of delivery, 120 days prior to the yearly anniversary of the expiration date. Such notification must be addressed to the Executive Director, Division of Contracts and Purchasing (hereinafter called the "Executive Director").

All discounts, terms and conditions are to remain unchanged throughout the total contract period(s).

1.4. CONTRACT EXTENSION

The Board, at its sole option may further extend this agreement for a final period of up to one hundred eighty (180) days, if the Director, or designee, shall so notify the contractor by written notice, via mail with delivery confirmation. Any purchase order dated prior to the final expiration of contract will remain in force and be subject to the terms and conditions stated herein.

1.5. TERMINATION OF CONTRACT

Any contract or any portion resulting from this bid may be terminated at any time, upon a minimum of thirty (30) days written notice, via mail, by the Director, or designee. In the event of termination, the contractor will complete delivery and the Board will receive deliveries of any orders which have been issued to the contractor prior to the date of termination.

1.6. SUBMISSION OF BID

The person, firm or corporation submitting a Bid shall furnish such Bid in a sealed envelope to the Vendor Resources representative at the place designated on or before the day and hour stated. The front of the envelope must indicate the name of the person, firm or corporation submitting this bid, the **Bid Serial No.**, the date of its submission and the title of the supplies and/or services for which the bid is submitted.

The bid submitted must include the entire Standard Bid Proposal Form as well as any amendments.

ALL BIDS MUST BE COMPLETED IN INK.

1.7. BID SUBMISSION FORM

Bidder must submit their bid on the pages entitled "Bid Blank" which incorporates the schedule of items, quantities, specifications and bid terms and conditions.

1.8. INTERPRETATION

To prevent all disputes, the Director, or designee shall in all cases determine the amount, quality, acceptability and fitness of the several kinds of materials delivered and work performed and shall determine any questions in relation to the work and fulfillment of the contract and methods to be adopted. The Director's, or designee estimate and decision shall be final, conclusive and binding upon the Contractor.

1.9. BID OPENING

On the date, time and place designated, the bids received will be publicly opened and read by the Director of Vendor Relations, or designee. The Director, reserves the right to waive any informalities if deemed in the best interest of the Board of Education.

THE USE OF VOICE RECORDING DEVICES OF ANY TYPE DURING THE PUBLIC READING OF BIDS IS NOT PERMITTED.

1.10. LATE BIDS

Bids which arrive after the date, time and place stated on the Standard Form of Bid Proposal for the opening of bids will not be accepted and will be returned to the bidder unread. Bids sent by mail, overnight carriers, messengers, etc., **are at the risk of the bidder** and will be returned to the bidder unread if received after date and time of bid opening.

Prior to bid opening, additional information pertaining to the bid terms or conditions of the proposal or where the bidder requires an interpretation or clarification of any ambiguity in the proposal, must be requested in writing to the Director, or duly designated representative whose response will be final and binding.

No protests will be considered regarding ambiguity in terms, conditions or specifications after the time set for the opening of bids.

1.11. BID DEPOSIT

No bid deposit will be required for this bid.

1.12. WITHDRAWAL OF BIDS

After the opening of bids, a request by a bidder to the Board of Education for consent to the withdrawal of their bid, because of an error made by said bidder, will be considered only under the following terms and conditions:

Request to withdraw bid must be received in writing providing reasons for the request. This request is to be sent to the Director, within five (5) business days following the date and time set for the opening of bids.

Whenever any bidder requests the consent of the Board of Education to the withdrawal of their bid, the Board 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 bidder upon the express condition that said bidder shall be excluded from bidding again for the re-advertisement of bids for the same item or proposal should no award be made. Should any bidder request the withdrawal of more than one bid in any twelve (12) month period, they shall be disqualified from bidding on Board of Education work for a period of one (1) year from the date of the second request.

Following the five (5) business days after the bid opening, a bidder may not withdraw their bid before the expiration of one hundred eighty (180) calendar days from the date of bid opening of said bid. A bidder may withdraw their bid after that date only if they state such intent in writing prior to the mailing by the Board of Education of a Purchase Order, Notice of Award, or Acceptance of Bids.

The Director, will make the determination with respect to request for the withdrawal of bids and that determination shall be final and binding. A partial withdrawal of bid may be permitted if deemed in the best interest of the Board of Education.

1.13. BIDDER'S QUOTATION

Bidders are required to insert in ink (the use of pencils to fill out the bid documents shall result in rejection of bid) on the schedule included, the unit price for the stated unit of measure and the total price for each item which the bidder proposes to furnish and deliver. In the event of a discrepancy between the unit price and the extension, the unit price will govern. **Bidders who alter prices including cross-outs and white outs or change prices inserted under unit price must submit with their bids a letter attesting to the fact that the changes were made by said bidder. Failure to do so may result in rejection of bid.**

The Board of Education of the City of New York is exempt from the payment of any federal, state and city taxes or excise taxes. All prices quoted must be net and not affected by the imposition of any federal, state and city sales or excise taxes or fees during the term of this contract.

All prices quoted must include inside delivery charges incurred for shipments made within the five boroughs of the City of New York. In the event merchandise is to be delivered to schools or offices outside the limits of the City of New York, shipment shall be made f.o.b. bidder's place of business with transportation charges prepaid and added to the invoice.

1.14. UNIT OF MEASURE

ALL ITEMS MUST BE BID IN ACCORDANCE WITH THE UNIT OF MEASURE SPECIFIED. THE BOARD OF EDUCATION RESERVES THE RIGHT TO REJECT ANY BID IF THE UNIT OF MEASURE IS CHANGED.

Bidders are to insert in the space provided, the Brand, Model or Stock Number they intend to furnish as a result of this quotation. Proposed alternates shall be clearly described and any variation from the specification or standard must be inserted in the space provided. In the event the bidder fails to provide this information, the Board of Education will assume that the item(s) to be supplied is as indicated or referred to in the specifications.

1.15. CATALOG REFERENCE

When a catalog reference follows the description of an item number on the bid blank, this described item is intended to generally show the grade, style, quality and size of the item to be furnished. Catalog references apply to the latest issue of the stated manufacturer and are to be regarded as part of the description of the item.

1.16. DESCRIPTION OF ITEMS

For details as to the quantity of the supplies/service or the nature and extent of the work required or of the materials to be furnished and delivered, bidder is referred to the specifications and/or bid blank. Bidder is advised to review specifications prior to submitting their bid.

Technical specifications contained herein are intended to cover the items(s) listed in this proposal in accordance with the latest and accepted practices of the industry. Bidders are advised to carefully review the specifications for ambiguity, incompleteness and deficiencies. Questionable specifications should immediately be brought to the attention of the Director or designee, in writing prior to submitting the bid. Notwithstanding any ambiguity, incompleteness of the specifications, upon award of contract, the vendor assumes full responsibility for furnishing and delivering the items awarded.

1.17. SAMPLES

All samples, if required, are to be submitted within five (5) business days of request or as specified in the request for sample letter with no cost to the Board. The sample submitted must be indicative of the quality that the bidder intends to supply during the life of the contract. Delivery point of the sample(s) will be indicated at time of request. All charges for delivery of sample(s) to test point and pick-up of sample(s) upon completion of examination shall be at bidder's expense with no charge to the Board of Education. Samples are for inspection, test, evaluation and comparison for compliance with specifications and standards outlined herein. Samples which do not meet or exceed specifications or functionality will be rejected. Samples of the specified brand may also be requested in order to conduct a thorough evaluation. All accepted samples not consumed in the testing process may be kept in the possession of the Board of Education until the expiration of the contract, including extension periods, when applicable.

Each item submitted must be identified with:

**Bid Serial No.
Date of Bid Opening
Board of Education Item Number
Bidder's Name
Mfr Brand and Model Number**

WITHOUT THIS IDENTIFICATION, SAMPLES MAY NOT BE ACCEPTED FOR EVALUATION. FAILURE TO SUBMIT SAMPLES, AS AND WHEN REQUESTED, MAY RESULT IN REJECTION OF BID.

Vendors will be responsible for arranging for pick up of their samples within thirty (30) calendar days of written notification or the expiration of the contract. Samples not picked up will become the property of the Board of Education.

1.18. ESTIMATED QUANTITY

The estimated quantity indicated in the schedule is an approximation of one year's requirements based on past experience and is not binding on the Board of Education. The Board of Education has the right to order any quantity which the Director or designee, deems necessary.

Vendors cannot refuse to deliver product or services or cancel contract if quantities exceed estimated quantity.

1.19. TIE BIDS

Low tie bids are low responsive bidders that are identical in price, meeting all the requirements and criteria set forth in the bid. In case of low tie bids, the Director or designee shall break the tie in the following order of priority:

- Select a New York City bidder.
- Select a New York State bidder
- Conduct a drawing. Tie bidders shall be invited to witness the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

1.20. MINIMUM DOLLAR QUANTITIES

Contractor(s) **will be** obligated to ship merchandise to any one delivery point (F.O.B. Delivery Point) where the net value of the order is \$25 or greater, unless otherwise stated.

1.21. ALTERNATE ITEMS

It is the intention of the Board of Education to consider and evaluate all alternate items bid. The Board of Education will not accept items below the quality specified and the Director or designee, reserves the right to determine if the items offered may be accepted as equivalent to the specifications.

When an alternate has been accepted by the Director or designee and award made accordingly, contractor must deliver only such accepted alternate. Exceptions to these provisions may be allowed at the discretion of the Director if deemed in the best interest of the Board of Education or where this may be warranted by unforeseen circumstances.

- 1.1 When a bidder is offering an alternate item in place of the referenced brand and/or model number, they must submit with their bid a catalog or specification sheet with a complete description of the substitute item. Failure to do so may result in rejection of bid.

1.22. PROVISION FOR ADDITIONAL ITEM-MODELS

During the contract period, additional product line supplements not specified as items on the bid blanks may be accepted as additional contracted items. The acceptance of product line supplements or additional items is at the discretion of the Director. A demonstration product, brochures, technical information including a sample may be evaluated by the Director before acceptance of supplemental items. Acceptable supplemental items may include items that become an upgrade of the goods or the services offered under this RFB. The Board of Education reserves the right not to award or add items for which prices are deemed high and not in the best interest of the Board of Education.

No additional items other than those stipulated in this bid may be accepted without prior acceptance by the Director.

1.23. ABILITY TO PERFORM

Upon request by the Director or designee, any bidder for this contract must furnish evidence in such forms as the Director may indicate, as to their financial ability, prior experience and ability to perform, etc. No award will be made to a bidder who fails to submit acceptable proof. Any statement or declaration made by the bidder which is found as untrue, or deemed unsatisfactory, will be sufficient cause for rejecting their bid. The Director or designee will determine whether the evidence of ability to perform is deemed satisfactory and will make awards based on such evidence.

1.24. BIDDER'S QUALIFICATIONS

Bids will be accepted **only** from firms actively engaged in the manufacture or sale of the commodities and/or services specified in the proposal. Bidder must have adequate equipment and organization to ensure prompt and efficient service to the Board of Education. The Director or designee reserves the right, before making an award, to inspect the bidder's and/or subcontractor's premises to determine if the location, facilities and equipment comply with the conditions of the proposal and to take any other action necessary to determine fitness, reliability and ability to perform.

No bid will be considered from any bidder not meeting all the specifications and requirements stated herein.

- a) Adequate equipment, organization and service as determined by stock of the equipment, accessories and/or supplies/service regularly maintained in bidder's place of business and adequate personnel which will ensure prompt, efficient delivery and support as required.
- b) References - may be requested attesting to bidder's reliability and ability in performance of contracts of similar size and scope.
- c) Bidder to provide financial documents such as, but not limited to Dun & Bradstreet Report upon request. Failure to provide requested reports shall result in rejection of bid.

Financial Standing

The provider must submit upon request a balance sheet, income statement, statement of earnings, and all related footnotes and attachments for its operations for the past three (3) years, the last year must be certified by an independent Certified Public Accountant. The individual, firm or corporation employed to prepare the financial statements must have no interest(s) in the proposal or any resultant contract and must so certify. If the provider has not been in business within the last three (3) years, the provider shall submit tax returns (personal and/or corporate) for the last three (3) years and the last year must have certified financial statement prepared by an independent Certified Public Accountant, including balance sheet, year to date and a statement of profit and loss year to date. If the provider is a new business, the provider shall submit personal tax returns for the last three (3) years as well as interim financial statement prepared by an independent Certified Public Accountant.

This statement must give evidence satisfactory to the DOE's that the business will have sufficient working capital to meet three(3) months of ongoing expenditures once services are begun and prior to the onset of contract payments.

1.25. USE OF SUB-CONTRACTORS

If bidders are subcontracting any portion of the work specified herein, the Director or designee must be notified and reserves the right to inspect subcontractor's premises to accept or reject the use of such subcontractor. Notification must be made in writing at time of bid opening. Failure to do so may result in rejection of bid

SUBCONTRACTOR LIST

A list of the subcontractors that will be used in any portion of the work must be attached to your bid. All subcontracts must be listed and cannot be used without written approval of the Department of Education.

Note: Subcontractor's address, telephone number, license numbers, class and expiration date information must be provided with the bid or within two (2) days of request. Failure to provide information will result in rejection of bid.

Should there be a change in any subcontractor from the company stated in the original bid document, written notification must be sent to the Director immediately. The Division of Contracts and Purchasing reserves the right to inspect the subcontractor's facility and accept or reject the use of such subcontractor. Failure to provide notification promptly may result in contract cancellation.

1.26. MINORITY AND WOMEN OWNED BUSINESS ENTITIES PARTICIPATION

The New York City Board of Education (BOE) strongly encourages the substantive participation of minority and women owned business enterprises (M/WBE) in the competitive bid process. The bid will be deemed to be M/WBE participating if either, (a) the Prime contractor and/or subcontractor(s) are identified by New York City as certified as M/WBE's, or (b) if the Prime contractor otherwise demonstrates a clear and strong commitment to, and support of, equal employment opportunity and employee civil rights. The award of this contract shall be on the basis of the lowest price.

To be considered substantive participation for (a) above, the value of the Prime or subcontractor's work must be at least ten percent of the awarded cost, or (b) above, if neither the Prime contractor nor its subcontractor(s) are City certified M/WBE's, substantive participation can alternatively be demonstrated by the Prime contractor 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.

- A record of hiring, placement and promotional practices which permit access to all levels within the firm's organization by women, minority, disabled and other employee groups covered by the Civil Rights Act of 1964.
- Policies, initiatives and programs which discourage discrimination against individuals on the basis of age, color, gender, national origin, citizen status, religion or 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 authorities nationally recognized civil rights organizations or other appropriate groups.

1.27. AWARD

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

The Board of Education reserves the right to reject any or all bids or to accept any part of any bid and reject the other part, if, in its opinion, such action would be in the best interest of the Board.

Bidders should be aware that the Department of Education retains the right to not award to any company which is delinquent in the payment of New York City, New York State or Federal taxes and fines. If your business owes taxes or fines and have paid said obligations within the last thirty (30) days or are contesting/disputing said obligations, you must submit with your bid proof of payment or letter informing the department that the amount is in dispute, or your bid may be disqualified.

The Board reserves the right to reject any bid from a bidder whose bid is submitted improperly, unintelligible or incomplete.

1.28. AFFIRMATION OF RESPONSIBILITY AND PAID TAXES

The Contractor affirms and declares that said Contractor is not in arrears to the City of New York upon any debt, contract or taxes and is not a defaulter, as a surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts except as stated in the affirmation pertaining to the foregoing which has been furnished to the Board.

1.29. VOLUNTARY PRICE REDUCTION

The Board of Education reserves the right to request Voluntary Price Reductions in the event that any of the price(s) quoted are deemed high on individual item(s) within an Aggregate Class, individual or contingency items.

1.30. NOTICE OF AWARD

The mailing by the Board of Education of the City of New York to the undersigned bidder at the address herein specified on the Purchase Order, Notice of Award, or Acceptance of purchase order for any of the items for which this bid is submitted shall constitute a contract between the Board of Education and the undersigned to furnish and deliver the items set forth in said Purchase Order, notice of award or acceptance of bid.

1.31. NON-ASSIGNMENT OF CONTRACT

The Contractor shall give their 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 designee. Request for permission to assign a contract shall be in writing to the Director. The Chancellor's designee shall grant or deny such requests after consultation with the appropriate Division or Office, the Board of Education's 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 11/02)

1.32. LABOR LAW

The Contractor agrees that they will comply with all of the applicable provisions of the State Labor Law.

1.33. AVAILABILITY OF FUNDS

In the event that the period of any resulting award extends beyond the end of the current fiscal year, such awards are subject to the availability of funds in succeeding fiscal years.

1.34. PURCHASE ORDERS

No delivery shall become due or acceptable without an order in writing issued by the Director, or the Regional Operations Centers or Administrative Offices of the New York City Board of Education that have the authority and capability to issue orders directly to vendors. Orders, when issued, will contain instructions regarding point of delivery and invoicing procedures. Orders will be issued throughout the contract period(s) for such quantities as may be required.

1.35. PAYMENT POLICY

The Chancellor has made prompt vendor payment an administrative priority of the Board of Education. Substantial effort will be made to assure that all bills are paid promptly.

1.36. DISCOUNT FOR PROMPT PAYMENT

The Board of Education reserves the right to deduct two percent (2%) from the prices quoted herein if payment is mailed within thirty (30) days from receipt, acceptance of a delivery or stated service and proper invoices with sufficient information to initiate payment.

1.37. ACCEPTANCE OF FINAL PAYMENT

The acceptance by the Contractor or by any person representing the Contractor of the final payment or any part thereof as audited by the Comptroller, whether such payment be made pursuant to any judgment or order of any court or otherwise, shall operate as and shall be a release to the Board from all claims of and liability to the Contractor and to the Contractor's representatives and assigns for anything done, furnished or for or pertaining to the work or supplies or for any neglect of the Board or of any person pertaining to or affecting the work done or supplies furnished hereunder. No interest shall be allowed on the amount certified as or audited by the Comptroller as the final payment or on any part thereof which the Treasurer of the City is ready and willing to pay.

1.38. NEW MERCHANDISE

Deliveries must consist only of new and unused merchandise. No rebuilt, modified, refurbished or re-manufactured or newly manufactured with used parts, merchandise will be accepted unless specified.

1.39. PACKING

All items are to be securely and carefully packed in uniform cartons with the same quantity contained in each carton. All cartons must be fully packed and constructed to protect contents while in transit. When shipping a chemical product, a Material Safety Data Sheet (MSDS) must be enclosed with each individual item. The weight of any one package shall not exceed fifty pounds (50 lbs.) unless the product itself exceeds fifty pounds (50 lbs.)

No charge will be allowed for cases, boxes, pallets, bottles, or for freight expenses, express or cartage. No empty packages, cases, boxes, pallets, carboys, bottles, etc. will be returned to the bidder or Contractor and none will be charged to or paid for by the Board of Education.

1.40. WORKMANSHIP AND QUALITY

The workmanship and quality of material specified shall be first quality and in accordance with the best standard trade practices. The Board of Education reserves the right to accept or reject any workmanship and/or quality whichever is deemed in the Board's best interest.

1.41. DELIVERY

The New York City Board of Education consists of approximately 1600 locations and 200 administrative offices within the five (5) boroughs. If and when required, delivery must be made directly to any and all locations at any given time.

Deliveries are to be made to the various destinations and to the specific room and location therein, as directed or as indicated on the purchase order(s) of the Director, or designee or authorized ordering agency. The time determined for delivery of the items shall be within Ten (10) business days after receipt of the order unless otherwise stated.

ALL DELIVERIES ARE TO BE MADE INSIDE THE BUILDING AND PLACED AS DIRECTED BY EITHER THE SCHOOL PRINCIPAL OR A PERSON IN AUTHORITY. NO ASSISTANCE WILL BE PROVIDED BY BOARD OF EDUCATION PERSONNEL.

If the Contractor is delayed in delivering any supplies by an act of omission of the Board of Education, the Contractor shall be allowed the number of days or parts thereof he was so delayed, all of which shall be determined and in writing by the Director and shall be binding upon the Contractor. No claim for damages or delays shall be made by or allowed to the Contractor for such delays.

When delivery is delayed due to causes beyond the control of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of the government, war, acts of war, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather, the Contractor shall be allowed the number of days or parts thereof he was so delayed provided that he notifies the Director within 24 hours in writing of the causes of the delay.

The Director or designee shall ascertain and determine the facts and extent of delay, whose determination shall be binding upon the Contractor. Should such delays inconvenience the Board by creating an emergency and thus necessitating the purchase elsewhere of the supplies involved, the Director, shall have the right to purchase the goods or services on the open market without liability to the Contractor and to the extent such purchases are made, the Contractor will be relieved of the necessity of furnishing such quantities.

The Director may accept or refuse an extension of time to the Contractor.

1.42. SUSPENSION OF DELIVERIES

The Director or designee reserves the right of suspending the delivery of the supplies or any part thereof, if it is deemed in the best interest of the Board to do so, without compensation to the contractor for such suspension other than extending the time for completing the deliveries as much as they may have been, in the opinion of the Director or designee, delayed by such suspension.

1.43. NON-DELIVERY - REJECTIONS

If the Contractor fails to make delivery within the time specified or if the supplies or equipment delivered or offered to be delivered under this agreement shall be rejected by the Director as not conforming to the specifications, the Board allows the Director to obtain such commodities or any part thereof from other sources on the open market or by contract. Should the new price be greater than the original contract price, the difference plus the liquidated damages, if any, will be charged against the original Contractor. Should the new price be less, the Contractor shall have no claim to the difference, but the liquidated damages will become due from the original Contractor.

1.44. TIME CONSTRAINTS

Time is of the essence in delivering all items contained on purchase orders issued pursuant to this contract. Contractors are advised not to bid on this proposal unless they are able to perform the contract in strict accordance with the specified allowable time for delivery. Failure to perform as specified may result in an administrative determination that a company is in default on its obligation and shall be deemed an irresponsible bidder thereby precluding it from bidding on future proposals for the New York City Board of Education.

1.45. REMOVAL OF RUBBISH

When delivering furniture or equipment requiring installation or assembly, all dirt, rubbish and accumulation of whatever character, including empty cartons, etc., resulting from deliveries under this contract shall be promptly removed from the premises by the Contractor, leaving all parts of the building clean thereof, and broom clean at all times. Removal of such rubbish must be made within twenty-four (24) hours after delivery. In removing dirt, etc., or conveying materials in or out of the premises, the floors must be protected by planks and all damages must be made good.

In case of any dispute as to removal of rubbish or refusal by Contractor to remove same when so directed, the Director, shall, at any time, order such dirt or rubbish removed by other parties and shall instruct that payment be withheld in a sum of one hundred dollars (\$100.00), or the cost of such removal (whichever is greater) from the amount of this contract.

This provision applies even if the delivery is made by common carrier.

1.46. POST AWARD SUBSTITUTIONS

If an awarded item is no longer available from the manufacturer, or the Brand and/or Model Number or any part of the description is changed during the terms of this contract, the following procedures are to be followed:

- 1) Written documentation evidencing the manufacturer's discontinuance of production or change of Model Number or description of the awarded item must be submitted together with the revised specifications stating changes and/or samples with original and new list price to the Director or designee.
- 2) When the substitute item has been determined by the Director, or his/her designee, to be of equivalent quality and durability and of equal or lower price to the originally awarded item, such determination(s) by the Director, shall be final, binding and conclusive upon the Contractor.

All requests for substitutions must be submitted in writing to the Director, as soon as the Contractor is notified by the manufacturer.

No substitute items are to be delivered until permission is granted, in writing, by the Director, or designee. If a substitute item is delivered without prior written approval, liquidated damages as well as inspection and re-inspection charges shall be imposed.

1.47. GUARANTEE AND WARRANTY

The Contractor does hereby warrant all work and materials to be in full and complete accordance with the contract, addenda, specifications and requirements appertaining thereto, and that all work and materials are free from any and all defects and imperfections and fully suitable for the use and purposes for which each is intended. The Contractor also agrees that, should any defect develop or appear which the Director, finds was not caused by improper use, the contractor shall promptly, upon demand, fully correct, substitute and make good, any such defective claim, demand, loss or damage, by reason of any breach of this warranty. The warranty shall continue to be in full force and effect for the period of **one (1) year** from the date of delivery, installation (if required) of all work and materials and final acceptance of each item or as otherwise stated herein.

The Contractor shall obtain all Manufacturers' Warranties and Guarantees of all equipment and materials required by the contract in the name of the Board of Education of the City of New York and if required shall deliver same to the Director.

1.48. INSPECTION OF DELIVERED GOODS

The work and materials required to be performed and furnished by the Contractor shall be under the direction and supervision of the Director. Inspectors are to reject and refuse acceptance of any part of any work, if the same does not comply in kind, with specifications, quality, size, number, weight, or in time or place of delivery. Inspector will reject any of the work or materials found to be improperly performed or furnished under any work order, and direct same to be taken down and removed and other proper work and materials provided in place thereof at the expense of the Contractor.

Where Board Inspectors refuse acceptance of work and/or items, for the reason that same does not comply with the said specifications, the Contractor agrees to be assessed the sum of five hundred dollars (\$500) as liquidated damages, for each re-inspection to determine that the rejected goods have been replaced with conforming work or items. This is in addition to and not in lieu of any procedures which may lead a vendor to be declared irresponsible and/or defaulted by the Board of Education liquidated damages for delays that appear in the paragraph captioned "Liquidated Damages".

1.49. LIQUIDATED DAMAGES

In case the Contractor shall fail to complete the delivery of said supplies and/or services hereunder in accordance with the specifications, terms, conditions and purchase order issued by the Director or designee, and to the satisfaction of the Director within the time stated, the Contractor shall and will, except as herein otherwise provided, pay to the Board an amount equal to two-fifths (2/5) of one percent (1%) of the contract value of the supplies specified in each order or portion of order so delayed for each and every day that the time consumed in said delay may exceed the time allowed herein for that purpose; which said sum, in view of the difficulty of ascertaining the loss which the Board or City will suffer by reason of delay in the delivery of said supplies hereunder hereby agreed upon, fixed and determined by the parties hereto as the liquidated damages the Board or the City will suffer by reason of said delay and default, and not by way of penalty; and the Comptroller of the City shall and may deduct and retain the amount of said liquidated damages out of the moneys which may be due or become due under this agreement, or any other agreement between the Contractor and the Board or City.

1.50. ADMINISTRATIVE COSTS OF THE BOARD OF EDUCATION

In each instance where the Board of Education must take corrective action due to the failure of the vendor to perform in accordance with the contract, the Board will assess two hundred fifty dollars (\$250) payable by the vendor as liquidated damages to cover administrative costs of the Board. Such infractions include but are not limited to incorrect invoicing, unapproved substitution of product, failure to notify the Division of Contracts and Purchasing of discontinuation of product or each instance in which the NYCBOE suspends or revokes approval for the Contractor to use an employee, agent or subcontractor in the performance of this Agreement due to unsatisfactory performance and/or conduct.

The Comptroller of the City shall and may deduct and retain the amount of said administrative fee out of moneys, which may become due under this agreement or any other agreement between the Contractor and the Board or City. The remedy provided for in this provision is in addition to any other remedies legally available to the Board under the contract or applicable law.

1.51. DEFAULT OF CONTRACT

The Board of Education shall have the right to declare the contractor in default of this contract if the contractor:

- violates any of the terms or conditions of this agreement;
- fails to provide and deliver the supplies and/or services, or any part thereof, ordered pursuant to this agreement, or fails to provide same in accordance within the time schedule(s) set forth;
- transfers or assigns this Agreement without the written consent of the Board of Education;
- executes this Agreement in bad faith;
- submits false or misleading documents to the Board in order to induce the award of this Agreement;
- accepts orders from schools, offices, units, bureaus, divisions etc., of the Board of Education for items not stipulated in this Agreement or any other current written Agreement with the Board;
- distributes sales or marketing literature to schools, offices, units, bureaus, divisions, etc., of the Board of Education without the written consent of the Director;
- delivers supplies pursuant to this Agreement which are packaged other than as specified in this Agreement;
- submits any invoice for payment for any item which has not been delivered;
- delivers items found to be damaged, used or otherwise defective or deficient and fails to substitute conforming items within five (5) business days of notice of the problem;
- becomes insolvent or makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York;
- is in arrears to the New York City Public School System, City or State of New York and/or Federal Government for taxes;
- has not obtained and maintained the insurance policies specified in this Agreement;

Upon a finding of default by the Board of Education, the Contractor may be barred from doing business with the Board of Education for a period of up to four (4) years and listed in the New York City Comptroller's VENDEX system of default contractors.

1.52. SALES AND MARKETING LITERATURE

The successful bidder, upon Award of Contract, may choose to produce literature for distribution at his own expense to schools and offices for promotional purposes.

All such literature must be limited to the items awarded and must not misrepresent or mislead in any way. Before distribution, the literature must be forwarded to the appropriate Procurement Analyst at the Division of Contracts and Purchasing for review and approval.

Failure to comply with the above may result in the denial of payments and the bidder may also be declared an "Irresponsible Bidder" and found in default of contract.

1.53. USAGE REPORT (PURCHASE ORDERS)

Contractor may be required to submit a semi-annual report on orders placed against the contract. The report format shall contain the contractor's name, item number and term of contract at the top of the page. The report shall indicate the period of time covered by the report starting from the date the first order is received and ending with the date it is prepared. The report must contain the following information. Item Number, Brand and Model, Product Description, Unit of Issue, Quantity ordered, Cost, Delivery Location, Quarterly Fill Rate, Back Order Report.

Contractor may from time to time be requested to produce reports within a particular time frame, i.e. fiscal year. These reports must be furnished within seven (7) days of request.

These reports are to be forwarded to:

**Suchitra Saxena
NYCDOE Division of Human Resources
65 Court Street
Brooklyn, NY 11201**

1.54. PRICE CERTIFICATION CLAUSE (REVISED 11/13/78)

The bidder certifies that the prices, warranties, conditions, benefits and terms quoted herein are at least equal or more favorable to the Board 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 bidder 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 bidder and other customers at the date of submission of the bid within, except as provided herein.

The successful bidder (hereinafter called the "Contractor") further certifies that during the period between the bid 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 whose term commences after the bid 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 Division of Contracts and Purchasing. Regardless of whether such notice is sent by the contractor or received by the Board 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 Board 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 the Board 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, after consideration of the written explanation may, in his/her sole discretion, decline to accept the explanation and there upon the terms will be at least equal to or more favorable to the Board 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.

Failure to provide the notice(s) required by the Price Certification Clause shall be deemed a material violation of this contract by the Contractor.

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.

1.55. MATERIAL SAFETY DATA SHEETS (MSDS)

As part of this contract, if any item contains toxic materials, the bidder must submit two (2) fully completed copies of the Material Safety Data Sheet (MSDS) for each of the items being bid. **NO AWARD WILL BE MADE WITHOUT THIS INFORMATION.** The bidder will be required to include the vendors name, bid serial number as well as the item number on each Material Safety Data Sheet submitted. Failure to include this information may result in the rejection of the bid.

Upon award and issuance of an order, the contracted vendor is required to include the Material Safety Data Sheet with all chemical based products or components to **each** delivery location. Special attention is called to the paragraph entitled "labeling" for requirements on each individual package, if applicable.

When any ingredient is changed in a product, a new MSDS **must** be sent to:

**Suchitra Saxena
NYCDOE Division of Human Resources
65 Court Street
Brooklyn, NY 11201**

All materials which the successful bidder will provide under purchase resulting from this solicitation must meet the minimum standard by NOSH and OSHA. If the Contractor is of the opinion that the items requested herein are inconsistent with these standards, the bidder will inform the Director, or designee in writing.

1.56. NEW YORK STATE "RIGHT TO KNOW" LAW

The "Right to Know" Law makes it mandatory for any manufacturer, importer, producer or formulator of any toxic substance shipped or transported or sold for any use within the state to provide the following information when requested.

- a) The name or names of the toxic substances including the generic or chemical name;
- b) The trade name of the chemical(s) and any other commonly used name;
- c) The level at which exposure is determined to be hazardous;
- d) The acute and chronic effects of the exposure at hazardous levels;
- e) The symptoms of such effects;
- f) The potential for flammability, explosion and re-activity of such substance;
- g) The appropriate emergency treatment;
- h) The proper condition for safe use and exposure to such toxic materials; and
- i) The procedures for cleanup for leaks and spills of such toxic substances.

1.57. PATENT RIGHT: COPYRIGHT

The Contractor shall be responsible for any claims made against the Board or the City for any infringement of patent rights or copyright arising from the sale, supply, or use of any patented or copyrighted supplies or equipment furnished or supplied under this contract. The Contractor shall defend, save harmless and indemnify the Board and/or the City for all costs, expenses and **damages, including attorney's fees, which** the Board or the City may be obligated to pay, or may otherwise suffer, by reason of any infringement of patent or copyrights resulting from such sale, delivery or use of said supplies or equipment.

1.58. CODE OF ETHICS

In accordance with policy adopted by the Board of Education, any contract, agreement or order issued as a result of this proposal is authorized subject to the provisions of the Administrative Code and the City Charter relating to a Code of Ethics and to the policies of the Board of Education relating to conflicts of interest. In the event that the Contractor is, employs, retains, or engages the services of any employee of the Board of Education in violation of the provisions of the Administrative Code or the City Charter relating to a Code of Ethics or of the policies of the Board relating to conflicts of interest, the Contractor shall have no claim in law and/or equity under the agreement nor shall the Contractor have any claim in law and/or equity against the Board of Education or any Board of Education agent, servant or employee.

1.59. NO DISCRIMINATION

It is agreed between the parties hereto as follows: As required by New York State Labor Law No. 220-E:

- 1) That in the hiring of employees for the performances of work under this contract or any subcontract thereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, color, age, sex, national origin, handicap, marital status, religious or political beliefs or affiliations, or sexual orientation 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 neither the 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, color, age, sex, national origin, handicap, marital status, religious or political beliefs or affiliations or sexual orientation;
- 3) That there may be deducted from the amount payable to the Contractor by the City under this contract a penalty for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this contract will apply;
- 4) That this contract may be canceled or terminated by the City and all moneys due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract and;
- 5) The aforesaid provisions of the 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.

1.60. 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.

1.61. FORUM PROVISION CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

The Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York.

The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City Federal Courts or in the courts of the State of New York (New York State Courts) located in the City and County of New York. To effect this agreement and intent, the Contractor agrees:

- a) If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by certified mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing; and
- b) With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of **forum non convenient**, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.
- c) With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it may otherwise have to move to transfer the action to a United States Court outside the City of New York.
- d) If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter re-institute the action in a court of competent jurisdiction in New York City.

If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

1.62. WRITTEN AGREEMENT

The written agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein. For example, no arrangements, oral or written, may be made with an individual at the delivery site.

1.63. ANTI-TRUST CLAUSES

The Contractor hereby assigns, sells and transfers to the City of New York, all right, title and interest in and to any claims and causes of action arising under the antitrust laws of New York State or of the United States relating to the particular goods or services purchased or procured by the City under this contract.

1.64. SET-OFF RIGHTS

The Board shall have all of its common law, equitable and statutory rights of set-off. These 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 State or City Comptroller.

1.65. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

- a) The Contractor agrees that neither the Contractor 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 1969, as amended, or of the regulations of the United States Board of Commerce promulgated thereunder.
- b) Under the final determination by the Commerce Board or any other agency of the United States as to, conviction of the Contractor or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or of the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this contract.
- c) The Contractor shall comply, in all respects, with the provisions of Section 343 - 10.0 of the Administrative Code of the City of New York and the rules and regulation issued by the Comptroller thereunder.

1.66. INVESTIGATIONS

- 1.1 The Bidders as well as the parties to this agreement agree to cooperate fully in any investigation, audit or inquiry conducted by a State of New York or City of New York governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses, to examine witnesses under oath, or conducted by the Inspector General of a 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 transaction, investigation, audit or inquiry.
- 1.2 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 other 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 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;
- 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 Inspector General of 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;

- 1.3 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 shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- 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 1.5 below without the City incurring any penalty or damages for delay or otherwise.
- 1.4 The penalties which may be attached 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 person was a member at the time 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/or
- b) The cancellation or termination of any and all such existing City 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 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 City.
- 1.5 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 accounts and records, and the forthcoming 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, lease, permits or licenses with the City.
- 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 1.4 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 1.3 (a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- 1.6 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, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.
- 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.

1.7 In addition to and notwithstanding any other provision of this agreement the commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) day written notice in the event 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 of the City 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 contract.

1.67. FEDERAL REGULATIONS

In every instance where the specifications for an item cannot be fully conformed with due to an order of the federal government, the bidder will quote the order or regulation preventing the bidder from fully conforming with the specifications, and may quote on an article which complies as nearly to printed specifications for the item, as is permitted under such federal regulations. In all such instances the bidder shall indicate and describe exactly the manner and extent of the variation between the article which they propose to furnish and the specifications for the item.

In instances where, at the time of bidding, the successful bidder in good faith believed that performance would be completed within the time stated on the bid, but subsequent to the opening of bids a new or amended Federal Regulation prevents them from performing within such time, the Director or designee may grant an extension of time which may be necessary.

The Contractor agrees that they will comply with all of the applicable provisions of The State Labor Law.

1.68. GOVERNMENT REGULATIONS

In all instances where a contract has been entered into and full compliance with the specifications of an item under contract subsequently become impossible due to government regulations, the Contractor shall notify the Director, of such fact and shall indicate and describe exactly the manner and extent of the variation between the article which they propose to furnish and the specifications for the item. If the claim of the Contractor is deemed well founded by the Director or designee, he/she may authorize and accept delivery of an article, the specifications of which shall be as near alike to the specifications of the item contracted for, as may be permitted by such regulations; if, in their opinion, the proposed delivery be of lesser value, they may agree on condition that the price be revised to the extent of the difference in value.

1.69. NO ESTOPPEL

Neither the Board nor the City, nor any Board or officer thereof, shall be precluded or estopped by any return or certificate made or given by the Director or designee, or other officer, inspector, agent or appointee of the Board of the City, under any provision of this agreement from any time (either before or after the final completion and acceptance of the work or supplies and payment therefore, pursuant to any such return or certificate) showing the true and correct amount and character of the work done and supplies furnished by the Contractor, or any other person under this agreement, or from showing at any time that any such return or certificate is untrue or incorrect, or improperly made in any particular, or that the work or supplies or any part thereof do not in fact conform to the specifications: and neither the Board nor the City shall be precluded or estopped notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from the Contractor such damages as it may sustain by reason of their failure to comply with the specifications.

1.70. COMPETENT WORKMEN

The Contractor shall employ only competent workmen, in performing this contract and if notified in writing that, in the opinion of the Director, any employee of the Contractor is incompetent they shall forthwith replace the employee and shall not again employ such person in the performance of this contract.

1.71. GIFTS AND GRATUITIES

The Contractor shall not give any gift or thing of value, whether in the form of services, loan promise, or in any other form, to any officer, employee, or person whose salary is payable in whole or in part from the City Treasury. Any violation of this section, at the option of the Board, shall terminate and render forfeit and void the contract and work herein and, in such event the Contractor shall be liable for the additional cost to the Board for completion of the contract here: and the Board shall have the right to assess damages against the Contractor for that amount over and above the contract price which the Board is required to expend in connection with the termination, re-letting and completion of the contract: and the Board may further regard any violation of this section as sufficient ground to preclude the Contractor from qualifying or pre-qualifying as a responsible bidder on subsequent Board of Education contracts.

1.72. 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 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:

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

- 1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- 2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- 3) ban provocative religious or political emblems from the workplace;
- 4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- 5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- 6) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- 7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the

creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;

- 8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- 9) Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE II. ENFORCEMENT OF ARTICLE I.

The Contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

1.73. LOCAL LAW 121

Local Law 121 requires City agencies to request that responses to competitive solicitations be printed double-sided on recycled paper.

Bidders should provide all information required in the format below.

- The bid should be printed on both sides of 8 ½" X 11" paper.
- The NYCDOE requests that all bids be submitted on paper having at least 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult <http://www.epa.gov/cpg/products/printing.htm>).
- Pages should be paginated.

Failure to comply with any of these instructions will not be considered non-responsive.

Is the response printed on recycled paper containing the minimum percentage of recovered fiber content as requested by NYCDOE in the instructions to this solicitation?

Yes _____ No _____

1.74 DISPUTE RESOLUTION

- A.** In the event the Contractor and the Board are unable to resolve their differences concerning a determination by the Board, the Contractor may initiate a dispute in accordance with the procedure set forth in this Dispute Resolution Section. Exhaustion of these dispute resolution procedures shall be a precondition to any lawsuit permitted hereunder.
- B.** The parties to this Agreement authorize the Disputes Resolution Officer ("DRO") selected by the Executive Director of the Division of Contracts and Purchasing to decide all questions of any nature whatsoever arising out of, under or in connection with, or in any way related to or on account of, this Agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to contract award) and the DRO's decision shall be conclusive, final and binding on the parties. The DRO's decision may be based on such assistance as he or she may find desirable, including the advice of experts. The effect of the DRO's decision shall not be impaired or waived by any negotiations or settlement offers in connection therewith, or by any prior decision of others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Agreement. All such disputes shall be submitted in writing by either party to the DRO, together with all evidence and other pertinent information with regard to such questions, in order that a fair and impartial decision may be made. The DRO shall render his or her decision in writing and deliver a copy of same to the parties within forty-five (45) days of the conclusion of submission of all materials and information, or such longer time as may be agreed to by the parties. In an unusually complex case, the DRO may render his or her decision in a longer period of time, not to exceed ninety (90) days or such longer time as may be agreed to by the parties, and shall so advise the parties at the commencement of this period. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice. The DRO'S decision shall be deemed a final agency action.
- C.** The DRO may formally decline to hear the Contractor's dispute; in such instance, the Board's Contract Manager's decision shall be deemed final agency action.
- D.** During such time as any dispute is being presented, heard, and considered pursuant to this Section, the terms of this Agreement shall remain in full force and effect and the Contractor shall continue to provide Services in accordance with this Agreement. Failure of the Contractor to continue to provide Services shall constitute a material breach of contract.
- E.** If the Contractor protests the determination of the DRO, or of the Contract Manager if such determination is deemed the final agency action, the Contractor may commence a lawsuit in Supreme Court, New York County under Article 78 of the New York Civil Practice Law and Rules. Such review by the Court shall be limited to the question of whether or not the DRO's decision or the decision of the Contract Manager, as applicable, was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such an action or proceeding that has not been presented to the DRO or the Contract Manager, as applicable, prior to the making of his or her decision.

FORMS

2.1. REMINDER TO ALL BIDDERS

1. VERIFY THAT THE FOLLOWING FORMS ARE COMPLETED:

- A. SECTION 2.2 "COMPANY INFORMATION"**
- B. SECTION 2.3 "NO BID RESPONSE FORM", IF APPLICABLE**
- C. SECTION 2.5 "EQUAL EMPLOYMENT OPPORTUNITIES FORM"**
- D. SECTION 2.7 "CERTIFICATE OF INSURANCE" (SAMPLE)**
- E. SECTION 2.8 VENDEX QUESTIONNAIRES**

2. PLEASE COMPLETE THE DOCUMENTS FOUND IN SECTIONS 2.13– 2.16.

- A. BIDDERS INFORMATION, CERTIFICATIONS AND SIGNATURES WITH CORPORATE SEAL.**
- B. AFFIDAVIT OF ACKNOWLEDGMENT, NOTARIZED. IF NOTARIZED BY A PARTY REGISTERED OUTSIDE THE STATE OF NEW YORK, A CERTIFICATION FROM THE COUNTY CLERK OF THE COUNTY IN WHICH THE NOTARY IS REGISTERED IS REQUIRED BY THE COMPTROLLER.**

ALL ABOVE DOCUMENTS MUST BE ORIGINALS; YOUR COOPERATION IN THIS MATTER WILL EXPEDITE THE AWARDING PROCESS OF THIS BID.

3. IF YOU MADE ANY CORRECTIONS TO YOUR BID PROPOSAL, (WHITEOUT, LINEOUT, ETC.) PLEASE ATTACH A LETTER STATING THAT THE CORRECTIONS WERE MADE BY YOUR COMPANY.

2.2. COMPANY INFORMATION**PLEASE PRINT LEGIBLY IN INK**

NAME OF COMPANY BIDDING _____

CONTACT PERSON _____

ADDRESS OF COMPANY BIDDING _____

CITY _____ STATE _____ ZIP
CODE _____IS THIS A NEW ADDRESS? _____ YES _____
NO _____

TELEPHONE NO. _____ 800 NO. _____ FAX NO. _____

E MAIL ADDRESS _____

FEDERAL TAX IDENTIFICATION NUMBER _____

NAME OF PERSON FILLING OUT BID _____

TITLE _____

AUTHORIZED SIGNATURE _____
Principal of Company Date

PRINT NAME _____

BID MUST BE RETURNED INTACT**WE ADVISE THAT YOU MAKE A COPY OF THIS CONTRACT PROPOSAL FOR YOUR FILES.
DUPLICATES WILL NOT BE ISSUED.**

2.3. NO-BID RESPONSE FORM**Bid Opening Date:** _____

IT IS NOT NECESSARY FOR THE BIDDERS WHO ARE SUBMITTING BIDS ON THE PRODUCTS AND/OR SERVICES SPECIFIED HEREIN TO RETURN THIS FORM.

THE NEW YORK CITY BOARD OF EDUCATION is committed to programs and policies that will result in the procurement of supplies, equipment and services that meet the quality standards required by our educational institutions at the lowest possible prices.

An important aspect of achieving this goal is to promote competitive bidding among as great a number of qualified bidders as possible.

However, the preparation and mailing of Bid Request Packages is time consuming and expensive. In instances where bidders fail to respond or notify the Board of Education of their future intentions, the preparation and mailing of the Bid Request Package represents an unnecessary expense to the Board of Education. Feedback from bidders is also encouraged so that any reasons for not bidding 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 bidders who respond with a "No Bid" response or choose not to bid, are requested to provide the information requested below and return this form in the envelope provided, in time for the bid opening. FAILURE OF NON-BIDDERS TO RETURN THIS COMPLETED FORM MAY RESULT IN THEIR BEING DROPPED FROM OUR BIDDER'S LIST FOR THE PRODUCT(S) AND/OR SERVICE(S) SPECIFIED HEREIN.

REASONS FOR NOT BIDDING AT THIS TIME:

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

*If this option is selected, and the bidder desires to be reinstated on the bidder's list in the future, the bidder must forward a written request to the Division of Contracts and Purchasing for reinstatement.

BIDDER NAME AND ADDRESS:**SIGNED:** _____ **TITLE:** _____ **DATE:** _____**BID TITLE:** _____

2.4. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR NON-CONSTRUCTION CONTRACTORS, VENDORS AND SUPPLIERS

This contract is subject to the NYC Charter, Chapter 35, Section 814 (k) for employment agencies and by signing this contract; the Contractor agrees that it shall not discriminate against employees or applicants for employment pursuant to federal, state or local law.

The attention of all bidders is particularly directed to the various orders, rules, regulations and procedures set forth in the contract documents with respect to identifying and eliminating both overt and covert discriminatory employment practices.

I - POLICY

It is the policy of the Board of Education, City of New York, in accordance with the Labor Law of the State of New York and other applicable laws, to provide equal opportunity for all qualified persons, to prohibit discrimination in employment because of race, color, age, sex, national origin, handicap, marital status, religious or political beliefs, affiliations or sexual orientation and to promote the full realization of equal opportunity through an affirmative, continuing program of compliance by all contractors, suppliers and vendors doing business with the Board of Education and their subcontractors.

II - IMPLEMENTATION

The Director, Office of Equal Opportunity (therein after referred to as the Director), shall be responsible for the implementation and administration of this policy. The Director shall be directly responsible to the Deputy Chancellor of the Board of Education and shall be responsible for issuing all orders, rules, regulations and procedures as may be deemed necessary or convenient for carrying out and implementing the policy set forth in Section I.

III - DEFINITION OF TERMS FOR THE PURPOSE OF THESE ORDERS, RULES, REGULATIONS AND PROCEDURES

A. Non-Construction Contract

Any agreement, or commitment by the Board of Education, City of New York, to purchase or lease supplies, equipment or services, the term Non-Construction Contract excludes contracts of the Board of Education related to the erection, construction, reconstruction, rehabilitation, alteration, conversion, extension, repair or demolition of buildings or improvements to real property, with the exception of supplies, equipment and materials thereof, and work, labor or services relating to architectural, engineering or consultant services.

B. Contractor

Any person or entity employing workers who bids for, applies for, or who is awarded a non-construction contract.

C. Employee of Non-Construction Contractor

Any person employed full or part time, in any capacity, by a person, partnership, corporation or business association, that has bid on, is bidding on, or has been awarded a non-construction contract or purchase order for work, labor, supplies, equipment, materials, goods or services by the Board of Education.

D. Minority Group Members

Blacks, Hispanics (non-European), Asian-Americans and American Indians.

E. Program of Affirmative Action

A detailed, result-oriented set of written procedures which when implemented with conscientious effect results in compliance with the Equal Opportunity Policy herein, through full utilization and equal treatment of minority group members and women at all levels and in all segments of the contractor's work force. An effective program of affirmative action shall include, but not necessarily be limited to, the following:

- 1) Development or reaffirmation of the contractor's Equal Employment Opportunity Policy:
- 2) Dissemination of the policy:
- 3) Responsibility for implementation:
- 4) A survey and analysis of employment at all levels and in all categories and aspects of its work force, which determines if and at which levels, categories and aspects the Contractor or Subcontractor is deficient in the utilization of minority group members and women:
- 5) Establishment of goals and timetables toward the attainment of which the Contractor's or Subcontractor's good faith effort must be directed to remedy any identifiable under-utilization of minority group members and women:
- 6) 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 minority group members and women:
- 7) 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.

F. Goals and Timetables

Projected levels of achievement resulting from an analysis by the contractor or subcontractor of its deficiencies and of what it can reasonably do to remedy them within a specified time frame.

G. Under-Utilization

Having fewer minority group members and women in a particular job classification than would reasonably be expected by their availability in the appropriate labor force.

IV - BIDDING AND AWARDING OF CONTRACTS

Pre-Award Conference

Prior to the award of contract to the apparent low bidder, and if requested in writing by the Director, such bidder shall attend a pre-award conference to be held in the Office of Equal Opportunity of the Board of Education for the purpose of acquainting him or her with the statutory and contractual requirements and what specific measures shall constitute an acceptable program of affirmative action.

Program of Affirmative Action

Prior to the award of contract to the lowest responsible bidder and upon demand, the low bidder must submit to the Director a detailed written Program of Affirmative Action (hereinafter referred to as P.A.A.). In the event that low bidder fails to submit an acceptable P.A.A. their bid may be rejected. The Program of Affirmative Action to be submitted shall:

- 1) Apply to all Board of Education non-construction contracts except that, with regard to contracts, subcontracts or purchase orders under \$100,000, the Director is authorized to make such modifications as may be appropriate in the individual case:

- 2) Encompass all phases of the employment process, including evaluation of job classification to ensure job relations, recruitment, selection, validity of examinations, retention, layoffs, seniority, assignments, training, promotion, salary and benefits:
- 3) Be considered by the Board of Education in its determination as to whether a numerical low bidder will be judged the lowest responsible bidder entitled to award thereof. The Director shall be the sole judge of the program's acceptability:
- 4) In addition to the above, fulfill the requirements of subdivisions (a) through (g) of this section:
 - a) The P.A.A. shall 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 under-utilization of minority group members and women. It shall 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 units, within the contractor's work force.
 - b) The P.A.A. shall 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.
 - c) The P.A.A. shall 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 employment 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.
 - d) The P.A.A. or portions thereof, shall be submitted in such format as shall be specified by the Director.
 - e) The P.A.A. shall include a commitment to submit to the Director, a separate P.A.A. of the form and substance specified in subdivisions (a) through (g) hereof, for each subcontractor prior to its approval by the Board of Education. Every subcontract made by a non-construction contractor shall also contain these rules, regulations and orders in their entirety or their incorporation by reference.
 - f) The P.A.A. shall include written evidence or other 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.
 - g) Unless exempted by the Board of Education, no specific commitment, including goals for minority group employment and adoption of equal employment practices, contained in the P.A.A. shall be acceptable, which is not at least equal to any such commitment contained in the most recent previous P.A.A., if any, of the Contractor or Subcontractor.

V - COMPLIANCE INSPECTION REPORT

Prior to the award of contract to the lowest responsible bidder and upon demand, the low bidder must submit to the Director of Equal Opportunity a compliance inspection report. The complete compliance inspection report must be returned to the Office of Equal Opportunity within twelve (12) calendar days from the effective date stated on the requisition for information accompanying the report form. Failure to submit the compliance inspection report within the period of time specified above may result in rejection of the bid and the disqualification of the bidder from bidding on Board of Education work for a period of one (1) year.

The compliance inspection report shall be submitted in a form provided by or approved by the Director and shall indicate and furnish explanation for any current or anticipated departures from the total labor force projections or minority group labor force projections in the contractor's or subcontractor's P.A.A., or from planned corrective action relating to employment policies as stated in the P.A.A.

VI - CONTRACTOR'S IMPLEMENTATION

Good faith efforts must be made to implement these affirmative action steps during the performance of the contract. The effectiveness of the affirmative action program shall be measured by the extent of progress made toward an equitable participation which reflects the appropriate available minority and female workforce, and the lack of such progress shall be a factor considered in determining whether there have been good faith efforts to implement the program.

VII - SANCTIONS AND REMEDIES

It is agreed that if the Contractor does not comply with the equal opportunity provisions herein stated, as solely determined by the Board of Education, the said contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Board of Education contracts and/or subject to such other sanctions as may be imposed and remedies invoked by the Board of Education in its discretion.

Prime Contractors shall be responsible for the compliance of their Subcontractor. Failure of its Subcontractor to comply with the provisions hereof or with affirmative action contractual provisions, shall be grounds for the imposition of sanctions and remedies against a prime Contractor. Such sanctions and remedies include the authority of the Director to halt scheduled payments to contractors who consistently fail to comply with the provisions hereof.

No sanctions or remedies shall be imposed on a bidder, contractor or subcontractor without affording such bidder, contractor or subcontractor an opportunity for a compliance review. The purpose of the compliance review is to enable the bidder, contractor or subcontractor to present written evidence as to why it should not be held in non-compliance with the Board of Education's Policy of Equal Employment Opportunity. The bidder, contractor or subcontractor shall be allowed at least twelve (12) calendar days to present such evidence. If at the end of such period compliance is not reached, and the Director maintains their position of non-compliance, the bidder, contractor or subcontractor may appeal to the Board of Education. Conformity to technical rules of evidence at a hearing shall not be required. The determination of such Board of Education appeal shall be final and conclusive, subject only to judicial review.

Each of the foregoing sections or subdivisions hereof shall be construed to be independent of all other sections and subdivisions unless the contrary is clearly indicated by the text.

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

2.5. EQUAL EMPLOYMENT OPPORTUNITIES

The provisions and terms herein will be strictly enforced by the Board of Education. It is the intent of the Board of Education to make this section's requirements applicable to all its contracts.

Emphasis is placed upon the following:

"Prior to the award of contract of \$100,000 or greater to a bidder, the bidder must submit to the Director, Office of Equal Opportunity, an Affirmative Action Plan. The completed Affirmative Action Plan must be returned to the Office of Equal Opportunity **within twelve (12) calendar days from the effective date stated on the Requisition for information accompanying the report form.**

Failure to submit the Affirmative Action Plan within the period of time specified above may result in a rejection of the bid and the disqualification of the bidder from bidding on Board of Education work for a period of one year".

To facilitate the processing of Affirmative Action Plans, bidder must furnish the information requested in the spaces provided below. **In turn, said forms will be mailed directly to the office and individual so designated.** Bidders are to alert said office/individual of contemplated direct mailings from our Office of Equal Opportunity.

Corporation Name: _____

Address _____
(Number and Street/Avenue)

(City) (State) (Zip Code)

Telephone No (Area Code) (Number) (Extension)

Federal I.D. No. _____

Email Address: _____

Fax No.: _____

Name of Corporate Affirmative Action Officer (Authorized to make Statements-Representations):

2.6. **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 Board 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.

The bidder shall 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 bidder the insurance coverage listed. In addition, certifications submitted must name the New York City Board of Education and the City of New York as additionally insured. Failure by the bidder to furnish the above certification(s) may result in rejection of the bid.

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 Board of Education and the City of New York against claims outlined in the coverage 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 Board 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, 65 Court Street Room 1202, 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 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 the said Director.
- 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, nor shall it be canceled, terminated, modified or changed by the Contractor securing such policy without the prior consent by the Board 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.

The following insurance policies shall be submitted with the bid book at the time and date specified for the public opening of bids. Failure to do so may result in rejection of your bid. Delivery of such insurance policies to the Board shall be a condition precedent to the right of the Contractor to demand any payments thereunder. 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.

A. 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 Board of Education until filing with the Director, 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/or until the completion of said deliveries or services/work to be performed is accepted by the Board of Education. Contractor shall only engage subcontractors when contract permits who comply with the workman's compensation.

B. COMPREHENSIVE GENERAL LIABILITY INSURANCE (INCLUDING PRODUCT(S) LIABILITY INSURANCE)

This shall insure the vendor and the vendor's agents, the Board 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 work performed or goods provided by the vendor or by any one 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.

C. MOTOR VEHICLE LIABILITY INSURANCE

This shall insure the vendor, the vendor's agents, the Board 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.

D. PROPERTY LOSS INSURANCE

The limit of liability shall be at least **\$500,000** per occurrence protecting the supplies, equipment and property, etc. of the Board 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 Board for either the loss of services, repair, restoration or replacement, whichever is applicable. This coverage may be a "Broad Form" policy covering any/all possible contingencies.

E. 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.

F. SAVE HARMLESS CLAUSE

Contractor hereby agrees to indemnify and hold the Board of Education and the City of New York harmless from all claims, damages, judgment, expenses, attorney 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.

2.7. This is a *SAMPLE* - an original certificate document should be obtained from the bidder's insurance company and submitted with the bid

CUSTOMER *	CERTIFICATE OF INSURANCE	ISSUE DATE NAIC NUMBER
PRODUCER	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW, COMPANIES AFFORDING COVERAGE: COMPANY LETTER A COMPANY LETTER B COMPANY LETTER C COMPANY LETTER D	
INSURED		

COVERAGES:

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

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

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

NEW YORK CITY BOARD OF EDUCATION AND THE CITY OF NEW YORK ARE ADDITIONAL INSURED

CERTIFICATE HOLDER	CANCELLATION
NEW YORK CITY BOARD OF EDUCATION DIVISION OF CONTRACTS AND PURCHASING 65 COURT STREET, ROOM 1202 BROOKLYN, NY 11201	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES, AUTHORIZED REPRESENTATIVE:

2.8. VENDEX QUESTIONNAIRES

The New York City Board of Education is required to register all awards of one hundred thousand dollars (\$100,000.00) or above with the New York City Vendex System. Vendors will be required to submit questionnaires titled **Business Entity and Principal Questionnaire** prior to award of contract and renewal of contract of this amount or more.

Failure to provide the completed Vendex Questionnaire will result in rejection of bid or renewal of contract.

When directed by the Department, and only when directed by the Department, the contractor will complete the appropriate VENDEX forms. 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. There forms can be found at:

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

VENDEX forms should be sent directly to the Mayor's Office of Contract Services.

If a vendor already participates in the Vendex System and has submitted the required questionnaires within the last three years, the vendor is required to complete the **Certification of No Change**. Two (2) original Certifications of No Change and copies of the original Vendex questionnaires must to be sent to Division of Contracts and Purchasing, 65 Court Street, Brooklyn, New York 11201 Attn: Procurement Analyst.

Please note: If your company is a Business entity, a Principal Questionnaire is required for each principal of you organization.

2.9. CRIMINAL CHARGES

Vendors submitting bids in response to this solicitation must disclose if there are any individuals employed by the company or consultants to the company that were convicted or indicted of any crime related to the antitrust laws in the past 10 years. You may be barred from doing business with the Board of Education as a result of such indictment and/or conviction.

2.10. CONFLICTS OF INTEREST

- A. No non-governmental Contractor may have on its remunerative Board of Directors (or comparable body), employ or have under contract for services (1) any present full-time officer or employee of the City of New York or the Board of Education or any part-time officer or employee of the Board, or (2) any present full-time officer or employee of the city (including the Board of Education) on leave from the City or the Board or any part-time officer or employee of the Board currently on leave from the Board. 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.
- 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 President of the Board of Education or the Chancellor. To obtain this permission, the officer or employee must contact the Board of Education's Ethics Officer. All other City officers or employees may serve as unpaid members of Boards of Directors (or comparable body) of a non-governmental not-for-profit Contractor, if the officer or employee has no involvement with the Contractor's business with the City or the Board.

- C. No officer or employee of the Board of Education, or the officer or employee's spouse/domestic partner or unemancipated child(ren) can have an ownership interest in the contractor, defined as an interest which exceeds five percent of the firm or an investment of \$32,000 in cash or other form of commitment, whichever is less, and any lesser interest when the officer or employee or spouse, unemancipated child(ren), or domestic partner exercises managerial control or responsibility regarding any such firm. (12/2/99).
- D. No former officer or employee of the Board may appear before the Board on behalf of a non-governmental Contractor within one year of the former officer or employee's termination of service with the Board. An appearance before the Board includes all communications with the Board. However, a former employee of the Board is not prohibited from serving on a non-governmental Contractor's Board of directors (or comparable body), or from employment or contracting for services with the contractor, provided that the former employee does not appear before the Board within one year of the termination of service with the Board.
- E. No former officer or employee of the City (including the Board) may have any involvement on behalf of a non-governmental Contractor with any aspect of a contract, including services under that contract, if that former officer or employee was involved substantially and personally with any aspect of that contract while employed by the City. Any former City employee whose duties for the City or the Board involved a contract shall contact the New York City Conflicts of Interest Board for clarification before having any involvement with the contract on behalf of a non-governmental Contractor or any other private interest.
- F. The Contractor warrants that, other than a bona fide employee or contractor regularly working as a sales representative for the Contractor, no person, selling agency, or other entity has solicited or secured this Agreement, or has been employed or retained to do so, for a commission, percentage, brokerage fee or contingent fee.
- G. The Contractor shall not give, and warrants that it has not given or promised to give, any gift or thing of value to a community school Board member, school leadership team member or to any officer, employer or other person whose salary is payable in whole or part from Board or City funds, or other funds under this Agreement. The phrase "gift or thing of value" shall include, without limitation, money, tangible goods, services, loans, promises or negotiable instruments.
- 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.
- J. Provider shall upon the request of the Board, complete a Conflicts of Interest Statement and Disclosure Statement (Rev. 5/13/99).

2.11. REPRESENTATIONS OF FACT

The bid proposal contains Representations of Fact and notarization which are provided for in Sections 2.13- 2.16. These pages must be original no photocopies will be accepted. These documents must be submitted with the bid.

If bidder omits imprint of Corporate Seal as required and/or does not execute applicable Affidavit of Acknowledgment as required and/or does not provide County Clerk's Certification for Notary Registered outside of New York State; the Director, may grant an extension of time to correct such deficiencies.

Failure to correct within time allowed will result in rejection of bid and price quoted will not be considered for Award.

2.12 AFFIDAVIT OF ACKNOWLEDGMENT

The bid shall be verified by the oath in writing (Notarization) by an authorized representative, that the declarations stated are in all respects true. If the bidder is a corporation the verification shall be made by an officer of such corporation with knowledge of the facts and having authority to make such sworn statements.

COMPTROLLER OF THE CITY OF NEW YORK REQUIRES A COUNTY CLERK'S CERTIFICATION OF NOTARY ON ALL OUT OF STATE NOTARIZATIONS**2.12.1 NON COLLUSION**

By submission of this bid, each bidder, and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with competitor;
- 2) Unless otherwise required by law, the prices that have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other bidder or to any competitor, and
- 3) No attempt has been made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

2.12. BIDDER INFORMATION CERTIFICATION AND SIGNATURE PAGE

Bid to the Board of Education of the City of New York
(Information requested below must be either typewritten or printed)

Business Name: _____

Place of Business: _____

Organization under the law of the state of _____

Telephone Number: _____ **Fax Number:** _____

Date of Bid: _____

(If the bidder is a firm, state below the name(s) and residence(s) of each member thereof)

Name of Partners

Residence of Partners

1. _____

2. _____

3. _____

(If the bidder is a corporation, state below the name(s) and residence(s) of each member thereof)

Name and Address of President: _____

Name and Address of Secretary: _____

Name and Address of Treasurer: _____

The bidder above mentioned declares and certifies

FIRST - That the said bidder is of lawful age and the only one interested in this bid and that no one other than herein above named has any interest in this bid of the contract proposed to be entered into

SECOND - By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization under penalty of perjury that to the best of knowledge and belief

- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor:
- 2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly by any other bidder or to any competitor:
- 3) no attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

THIRD - That no Councilman of the City of New York member of the Board of Education of the City of New York or any officer or employee or person whose salary is payable in whole or in part from the treasury of the City of New York is directly or indirectly interested in this bid or in the supplies, materials, equipment, work or labor to which it relates, or in any portion of the profits thereof except as permitted by Section 524 of the New York City Charter which provides that the prohibition of school officers being interested in Board of Education contracts shall not apply to authors of school books used in any of the public schools because of any interest they may have as authors in such books

FOURTH - That said bidder is not in arrears to the City of New York upon debt contract or taxes and is not a defaulter, as surety or otherwise upon any obligation to the City of New York and had not been declared not responsible or disqualified by the he agency of the City of New York or State of New York nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except _____

FIFTH - That said bidder has carefully examined the standard form of contract proposal approved as to form by the Corporation Counsel including the instruction to bidders, specifications and the schedule prepared by the Director, Office of Purchasing Operations and will if successful perform all its terms covenants and conditions and will furnish and deliver at the prices bid within the time stated, all the materials, supplies, apparatus, goods, wares, merchandise, services or labor named and described therein for which bid is made.

****SEE FOLLOWING PAGE** _____

2.13.**BIDDER INFORMATION CERTIFICATION AND SIGNATURE PAGE**
(Cont'd)

SIXTH - The bidder expressly undertakes and agrees if successful to fully comply with any and all laws orders or regulations of any federal, state or municipal authority or agency insofar as any of the same may affect the execution of this contract and to promptly notify the Director, Office of Purchasing Operations in writing of any such order regulation or law that may be promulgated at any time during the course of the execution of this contract that affects the execution of the contract

SEVENTH - By signing this bid, Contractor agrees that the provisions regarding the MacBride Principles constitute material conditions of this contract with the Board of Education.

It is certified that the prices quoted herein are exclusive of all federal; state and city sales or excise taxes.

The total number of items for which bids are submitted is _____

The total cost of said items is the sum of _____

Dollars \$ _____

The amount of bid deposit or bid bond furnished with this bid is the sum of:

Dollars \$ _____

Signature _____
(individual, firm or corporation, as case may be)

(Please note that applicable affidavit of acknowledgment on the following two pages must be executed)

By _____
(Where bidder is a corporation add:)

Attest:

Secretary (Seal)

- Notes:**
1. Where bidder is a firm, the bid must be signed in the name of the firm by a member thereof, who must sign his own name immediately thereunder as, A. & B. Co., by C. A., Partner.
 2. Where the bidder is a corporation, each bid must be signed in the name of the corporation by some duly authorized officer or agent thereof having knowledge of the matters stated in the bid, and such officer or agent shall also subscribe his own name, as: A. B. Company, C.D., by President. The Seal of the corporation should also be affixed.
 3. Individuals doing business under a trade name must present the bid in such individual's correct name. The style "Thomas Jones, doing business as (d/b/a) Celestial Paper Co." may be used.
 4. Said bidder is not in arrears to the Board and/or City of New York upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the Board and/or City of New York, and has not been declared not responsible, or disqualified, by the Board and/or any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except _____

The bidder shall file with the bid an affirmation that it has paid all applicable City income, excise and other taxes for all years it has conducted business activities in New York City, and indicate on its bid its Tax Identification Number

2.14.

**AFFIDAVIT OF ACKNOWLEDGMENT FORM
(BY AN INDIVIDUAL)**

STATE OF _____

COUNTY OF _____ ss.:

ON THE _____ Day of _____ 20_____

before me personally came _____

residing at _____ in the City of _____

to me known and known to me to be the same person described in and who executed the foregoing instrument and acknowledged to me that he had executed the same

Commissioner of Deeds, The City of New York or Notary Public

(BY A PARTNERSHIP)

STATE OF _____

COUNTY OF _____ ss.:

ON THE _____ Day of _____ 20_____

before me personally came _____

residing at _____ in the City of _____

to me known and known to me to be a member of _____

the firm described in and which executed the foregoing instrument, and he acknowledge to me that he subscribed the name of said firm thereto on behalf of said firm for the purposes therein mentioned.

Commissioner of Deeds, The City of New York or Notary Public

(BY CORPORATION - ONE OFFICER ACKNOWLEDGING)

STATE OF _____

COUNTY OF _____ ss.:

ON THE _____ Day of _____ 20_____

before me personally came _____

residing at _____ in the City of _____

to me known, who, being by me duly sworn, did say, for himself that he resides at _____

in the City of _____ and is the _____

of _____

the corporation described in and which executed the foregoing instrument, that he knows the corporate seal of said Corporation, that the seal affixed to the foregoing contract is such corporate seal and was affixed thereto by order of the Board of Directors of said corporation, and that by like order he thereto signed his name official designation.

Commissioner of Deeds, The City of New York or Notary Public

WHEN NOTARIZED BY A PARTY REGISTERED OUTSIDE OF NEW YORK STATE, A CERTIFICATION FROM THE COUNTY CLERK OF THE COUNTY IN WHICH NOTARY IS REGISTERED IS REQUIRED BY THE COMPTROLLER.

2.15.

**AFFIDAVIT OF ACKNOWLEDGMENT FORM
(Cont'd)**

(BY A CORPORATION - TWO OFFICERS ACKNOWLEDGING)

STATE OF _____

COUNTY OF _____ ss.:

ON THE _____ Day of _____ 20_____

before me personally came _____

and _____

each to me known, who being by me severally duly sworn, did say, each for himself as follows:

The said _____

that he/she resides at _____ in the City of _____

in the state of _____

the corporation described in and which executed the foregoing instrument, and the said _____

that he resides in the City of _____ and

is the _____ of said Corporation; that he knows the corporate seal of said

Corporation; that the seal affixed to the foregoing instrument is such Corporate seal; that it was affixed by the order of the Board of Directors of said corporation, and that by like order he thereto signed his name and official designation.

Commissioner of Deeds, The City of New York or Notary Public

(BY AN ATTORNEY IN FACT)

STATE OF _____

COUNTY OF _____ ss.:

ON THE _____ Day of _____ 20_____

before me personally came _____

residing at _____ in the City of _____

the attorney in fact of _____

the contractor named in the foregoing instrument, to me known to be the individual described in and who as such attorney, executed the foregoing contract and acknowledged before me that he executed the same as the act and deed of said party or parties, therein described as the Contractor, and for the purposes therein mentioned, by virtue of a power of attorney duly executed by the he said contractor, bearing date the _____ day of _____ in the year 20_____

Commissioner of Deeds, The City of New York or Notary Public**WHEN NOTARIZED BY A PARTY REGISTERED OUTSIDE OF NEW YORK STATE, A CERTIFICATION FROM THE COUNTY CLERK OF THE COUNTY IN WHICH NOTARY IS REGISTERED IS REQUIRED BY THE COMPTROLLER.**

SPECIAL BID TERMS AND CONDITIONS

3.1. BACKGROUND:

The contract(s) will be used by the New York City Department of Education ("Department", "NYCDOE", or "Board") for its advertising and marketing needs. The contract(s) will include print advertising and marketing (i.e. newspapers, magazines, other periodicals and trade publications) and internet advertising and marketing (i.e., newspaper Internet facilities and independent Internet facilities such as Monster.com, Hotjobs.com, Google.com, etc.).

Bidders will provide discounted rates for the Department's advertising and marketing needs. The Department will place advertising and marketing as needed and will neither be required to order a minimum number of advertisements nor be limited by a maximum number of advertisements. The quantity of advertising ordered shall be that which is actually required by the Department.

3.2. INQUIRIES:

Specific questions concerning this RFB should reference the RFB by section number and be submitted in writing via email to **Malcolm McCormack** at mmccormack2@schools.nyc.gov. Questions must be submitted before **4:00 PM** on **May 22, 2008**. No telephone calls will be accepted regarding this RFB.

If possible, these questions will be answered at the pre-bid conference (See Section 3.3) and additional questions may be submitted orally at the conference. Questions received by the deadline shall be answered in the Questions & Answers (Q & A) document, which will be posted on the DCP Open Requests for Bids website: <http://schools.nyc.gov/Offices/DCP/Vendor/RequestsforBids/Default.htm>.

Bidders should not rely on any representations, statements, or clarifications not made in this RFB, a formal addendum, or at the pre-bid conference. Notwithstanding the foregoing, if the BOE issues an addendum with a digest of the inquiries made and answers given at the pre-bid conference, bidders shall rely on the information contained in such Q&A addendum rather than those given orally at the conference.

3.3. PRE-BID CONFERENCE:

A pre-bid conference, at which Bidders will have the opportunity to ask questions related to this RFB, will be held on **2:00 PM** on **May 20, 2008** at 65 Court Street, 12th Floor Conference Room, Rm 1201, Brooklyn, NY 11201.

BID SPECIFICATIONS AND BID BLANK

4.1 SCOPE OF WORK

The advertising agency awarded the contract ("Contractor") agrees to furnish all services necessary and required for advertising and marketing for the Department. There will be one account for the Contractor with the Department that will be divided into sub-accounts for each Department Entity eligible to purchase services under the contract(s) ("Entity"). These entities (i.e., Office of Teacher Quality and Programs, Office of International Teacher Support) and any other Department entities will be entitled to place orders under, and receive the benefits of, the rates established by the contract. If an Entity contacts the Contractor and attempts to place an order outside the provisions of the contract, the Contractor will inform the Entity of the contract's existence and refuse to accept such order unless and until the Executive Director, Division of Contracts and Purchasing, authorizes it.

Minimum Qualifying Requirements

Prior to award of the contract, the bidder must have in place the following:

- (1) An on-line computer system capable of transmitting advertisings to all publications or Internet posting facilities.
- (2) "Open" advertising accounts in good standing with the New York Times, other periodicals and electronic media (internet) companies for which bidder had submitted a bid.
- (3) Computerized accounting systems for billing and inventory control with sufficient capacity and flexibility to provide customized billing and reporting services to the entities using the contract(s). The computerized system shall have the capability of generating "ad hoc" reports. The bidder shall provide samples of the typical formats used for billing current customers; such formats shall be substantially in accordance with the section below entitled "Billing". Alternatively, the bidder must demonstrate the ability to meet the Department's billing format and other billing requirements.
- (4) The ability to provide the Department experienced Account Executives in Advertising and Marketing and sufficient staff capable of handling high-volume advertising.
- (5) Working knowledge and experience in placing advertising and marketing with publications, periodicals, electronic media (specifically the internet) and broadcast radio stations.

Department Contract Rate

Bidders must bid a Department Contract Rate of not more than 90% of the open rate (i.e., a percentage discount of not less than 10% off the open rate.) In submitting bids, bidders are advised that the rate to which the Department Contract Rate billing shall be calculated is the lowest open rate offered by any publication. (Example: Paper "X" has a national rate of \$30/line and local rate of \$25/line. The Department Contract Rate will be applied the lower open rate which, in this case, would be the local rate.)

The Department Contract Rate must be bid in whole or half (0.5) numbers. Department Contract Rates bid in other than whole or half percentage points will be rounded down to the nearest half percentage point and payments will be paid at such rounded-down rates.

Bidders must submit bids for all categories (i.e., "line items") and the Department will award, if at all, to one bidder. All advertising/marketing volumes ("estimated annual quantities") in the table below are expressed only for bidding purposes. In all categories, the Department Contract Rate will be applicable to any volume rate.

Category	Estimated Annual Expenditure
New York Times Only (Print)	\$ 375,000.00
New York Times Only (Website)	\$ 225,000.00
Publications other than the New York Times	\$ 450,000.00
Internet Sites (Excluding NYT website)	\$ 450,000.00
Total	\$ 1,500,000.00

The Contractor will advise entities if newspapers and other publications have different rates for specific sections or pages of a publication. The Department Contract Rate will apply to all sections or pages of a publication.

The Department will not pay an open rate for its advertising/marketing. In the event that only one rate is available, Contractor(s) must provide written documentation from the publication substantiating the single rate. When a publication has only a single rate, the rate for all purposes will be the open rate of the publication for the particular size and type of advertisement. The Department Contract Rate will then be calculated from this rate. (For example, if the 1/4 page published rate for Journal "Y" is \$250, the Department Contract Rate is calculated from this published rate.) The Contractor is responsible to communicate any publication's promotional rates that are lower than its discount rates to all Entities using the contract(s) prior to each promotion.

Item #1: The New York Times only (Print and Website)

The New York Times offers four distinct options for advertising in the paper as follows:

- (a) Classified/Digital
- (b) Classified Display/Digital
- (c) Display ROP (run of paper)/Digital
- (d) Digital only

In addition, all newspaper advertisements are uploaded automatically to the New York Times web site for seven days without any additional charge. The Department Contract Rate, as provided by the bidder, will be applied to all four of these advertising options listed above during any seven-day period. The Department Contract Rate must be applied to the lowest open rates in any edition that are current at the time of the placement of the advertisement. Moreover, the Contractor(s) will review volume rates on a quarterly basis and inform the Department of volumes achieved and any applicable discounted volume rates. In addition, the Department Contract Rate will be applicable to all volume rates earned by the Department.

Item #2: Publications other than the New York Times

The Department Contract Rate provided by the Bidder will be applied to all sections and pages of a publication's lowest open rate, volume rates earned by the Department or promotional rates available at the time an advertisement is placed. On a quarterly basis, the Contractor will inform the Department of volumes achieved and any applicable volume rates.

Item #3: The New York Times and Other Publications (including New York City, Regional or National Newspapers and/or Other Print Media)

This category combines Item #1 and Item #2.

Item #4: Independent Internet Sites only (excluding the New York Times)

The Department Contract Rate, supplied by the bidder, will be applied to all internet postings. Moreover, the Department anticipates that Contractor(s) who purchase internet posting sites in quantities will pass along to the Department the benefit of these volume rates. The Department will not pay the open rate for a single posting when the Contractor(s) has purchased a volume rate. The Contractor must include verification of its volume rate. The Department will pay the single posting rate only when it is a single posting on a unique site that does not offer any discounted rates. The Contractor must notify the Entity and Department Contract

Manager of the single posting rate. Any advantages of one internet site over another for any advertising are to be brought to the attention of the Entity. The Contractor(s) will inform the Department Contract Manager of volumes achieved by the Department. The Entity will make the final determination selecting internet sites.

Item #5: All Publications and Internet Sites

This category combines all of the above Item numbers.

Art Work, Copy and Identifying Information for Advertisements

Newspapers

Upon request of the Entity, the Contractor(s) shall develop, at no additional cost to the Department, three (3) different display advertisement styles, subject to the Department's approval. These options shall range from a "basic" style to more stylistically sophisticated ones.

Display Style #1 - bold heading type, standard typeset and font, straight-line border.

Display Style #2 - bold heading type (may be reverse type), may include small logo of Entity, Department and Department seal/logo or "New York City Department of Education" in script with Mayor's and Chancellor's name, different combinations of font types, more than straight line border.

Display Style #3 - heading more than just bold type, Entity specific logos including mottos or headings and Department seal/logo or "New York City Department of Education" in script, some graphic illustrations may be provided by Entity.

Display Style #3 is the only style in which standardized advertisements units may not be utilized. Use of any of the three pre-approved Display Styles described above shall be billed only at the discounted rates. Typesetting and production of full mechanical of each advertisement is not defined as artwork and the cost of such work is to be included into bid rates. It will not be separately reimbursed. Any different display advertisement artwork requested by an Entity shall be charged only at the standard rate of 10% of the Department Contract Rate of the advertisement. (For example, an open rate ad for \$100.00 is bid at 90% City Contract Rate, making the cost of the ad to the Department \$90.00. The artwork rate is calculated at 10% of the Department Contract Rate of \$90.00. Thus, the cost of the artwork is \$9.00.) Computation of such charges shall be listed separately on the advertisement invoice and applies to all publications.

The Contractor(s) must proofread each advertisement copy submitted by the Entity and notify the Entity of any apparent errors made in the copy. Changes, other than correcting obvious typographical errors or spelling errors, may not be made to the advertisement copy unless authorized by the Entity representative. The Entity will assign a unique number or code to each advertisement ("Advertisement Identifier") in order to distinguish the responses to the different advertisements placed. The Contractor(s) shall notify the Entity of the cost of an advertisement prior to the Entity submitting the advertisement for publication. The Contractor(s) shall lay out each advertisement in the most cost effective manner resulting in maximum readability and typeset according to the standard specification of each publication. In addition, the Contractor(s) will make every effort to ensure that the advertisement is placed advantageously on the page. The Contractor(s) shall provide the Entity with a copy of each advertisement placed within seven (7) days of placement.

Contractor(s) Representatives

The Contractor(s) shall provide the necessary number of account representatives to service the contract(s) and support staff to ensure accuracy and timeliness of work and to acting as liaisons to the Entities in order to resolve any issues concerning the advertisements. The account representatives shall contact the Department Contract Manager whenever an issue cannot be resolved with an Entity. An account representative shall accept advertisement copy via facsimile copy transmission, e-mail or telephone. The Contractor(s) shall at all times provide the Entities with a preview copy of the advertisement to be placed prior to it being finalized for approval. Any changes to be made to the advertisement shall take place at this point. The advertisement then goes back to the Entity for final approval. At the direction of the Entity, the Contractor(s) shall rerun a previously submitted advertisement with a new Advertisement Identifier. The account representative shall contact the Entity to confirm the cost of each advertisement placed by the Contractor(s) prior to final approval of the advertisement being placed. Each Entity will provide the Contractor(s) and the Department Contract Manager with the list of

names of those individuals responsible for payments of invoices and the principal contacts that will be responsible for placing advertisements, answering questions and coordinating related functions. The Contractor(s) should be notified of any personnel changes within the Entities.

Advertisement Assistance

The Contractor(s) shall, at no additional cost to the Department, provide each Entity with all necessary and requested information regarding publications (i.e., rates, readership, circulation, demographic focus of publications), as well as any other information an Entity may deem necessary. The Contractor(s) shall provide the Entity with information as to when newspapers/publications have promotional opportunities and rates. Promotional information should be given to an Entity prior to and well before the promotion. Prior to commencement of the contract(s), the Contractor(s) will distribute to all Entities any procedural material necessary to facilitate the placement of advertisements. This material must also be supplied to the Department Contract Manager prior to distribution.

Billing

Upon receipt of tear sheet (i.e., copy of newspaper ad), the Contractor(s) is responsible for submitting the invoice to the individual Entity for services rendered. The Department will not pay an invoice prior to the placement of any advertising. Invoices must identify each advertisement by date of insertion and shall contain the following:

- (a) Name of Publication and/or name of media form being used
- (b) Name and address of Entity placing the advertisement
- (c) Name and address of Contractor for payment with name of contact person
- (d) Invoice number
- (e) Billing date
- (f) Terms of payment - 30 days
- (g) Entity Department code
- (h) Date of insertion (date advertisement was published)
- (i) For newspapers, current open rate of the publication (if no open rate, the published rate). It is the responsibility of the Contractor(s) to make sure all Entities have the current rates of publications. Failure to advise an Entity of change/increase in a rate before the order is placed shall result in advertisement being paid for at the lower rate.
- (j) Open rate (per line/inch) with Department Contract Rate being paid
- (k) Description of advertisement, including title of advertisement placed in quotations
- (l) Size of advertisement - Standard Advertising Units (SAU) Dimensions for display or number of lines for classified advertisements (Non-standard may only be used with Display Style #3)
- (m) Other charges, adjustments or credits (with legend)
- (n) Total amount of invoice, before and after discounted rate; sum of all costs.
- (o) Tear sheet (copy of original newspaper advertisement) must be attached to all invoices with the name of the publication and date clearly visible
- (p) All advertisements must be numbered in the following manner: Entity code number, followed by individual ad number, followed by invoice number.
- (q) Type of advertisement: display, classified, full-page, etc.

- (r) Department requirements contract number and Entity contact person and his or her phone number
- (s) All unit rates appearing on invoices must be the same as those given to Entities on rate sheets, rate cards, etc. Entities must be notified, prior to publication and billing, of any and all rate changes.
- (t) Internet billing can be placed on the same invoice as a print advertisement but it must be listed separately, clearly identifying it as Internet advertising with all necessary information as required by Entity. Each Entity shall provide the Contractor(s) and the Department Contract Manager with one billing address and the name and phone number of a contact person(s) to assist the Contractor(s) or the Department Contract Manager with any questions or problems related to the placement of advertisements, billing and or any other issues.

Advertisement Errors for Publications

Unless such errors are solely attributable to the Entity placing the advertisement, the cost of an advertisement run with one or more errors will be adjusted according to the adjustment schedule recommended by the Association of National Classified Advertising Managers ("ANCAM") set forth below. Contractor(s) has sole responsibility for proofreading all advertisements.

100% Adjustment

- (a) All identifying features are incorrect or omitted (e.g., name, address and phone numbers).
- (b) The meaning of the advertisement is totally altered, thereby giving the reader a wrong impression.
- (c) Advertisement appears in wrong classification.
- (d) Alpha sort error within classification.
- (e) The cutoff (line) rule between two advertisements is omitted, causing them to blend together and appear to be one advertisement.
- (f) Failure to kill advertisement notwithstanding timely request to do so.
- (g) Advertisement appears on wrong date.
- (h) Unauthorized advertisement.
- (i) Duplication of advertisement.
- (j) Advertisement billed but not run in publication.
- (k) Advertisement appears in wrong section (zone)
- (l) Job title or job description is wrong or omitted.

50% Adjustment

- (a) Department name or name of Department official is omitted or misspelled.
- (b) Two identifiers are in advertisement and one is wrong.
- (c) Logo is omitted or wrong.
- (d) Major element of advertisement is omitted or incorrect.
- (e) Wrong illustration appears in a display advertisement (depending on total impact of advertisement).

25% Adjustment

- (a) Typographical errors cause some negative impact on response.
- (b) Layout is not followed exactly.
- (c) One of four important points is omitted or wrong (e.g., qualifications for a job, separate job openings, etc).
- (d) Words or punctuation are omitted or wrong and diminish advertisement's effectiveness to a minor degree.
- (e) Part of body copy is omitted or incorrect.
- (f) Advertisement appears larger than ordered (i.e., overset, wrong type size, etc).

10% Adjustment

- (a) Indistinct copy exists in one or more lines.
- (b) An aesthetic or cosmetic error exists - if wording is entirely correct and only the set up or visual "look" of the advertisement is not exactly as ordered.
- (c) 'Misspelling or wrong wording exists where overall effectiveness of advertisement is not seriously impaired (i.e. transposed copy).
- (d) One or more listings of multi-listing advertisement are incorrect.
- (e) Name of person to be contacted is misspelled.
- (f) Blurred type exists.

Internet Adjustments

In the case of time sensitive material, such as classified internet postings that are being listed for a 24-hour period or longer, the Contractor(s) is responsible for correcting any and all errors appearing on a posting immediately or within a 24-hour period. Should an advertisement go uncorrected, the Contractor(s) shall assume full responsibility and adjust invoice payment accordingly.

Entity Cancellations

An Entity reserves the right to cancel the placement of an advertisement within the specified cancellation period. The Contractor(s) shall inform the Entity of the cancellation deadline at the time of placing the advertisement.

Reports

The Contractor(s) shall generate a monthly report for the Department Contract Manager or designee, listing advertising activities for all Entities during the preceding month. With each report, the Contractor(s) must include a copy of all invoices associated with advertisements placed by all Entities during the report period. The monthly report and the copies of corresponding invoices are to be received by the 15th day of the month. In addition, the Contractor(s) shall provide, at no extra cost, data and any other information which shall, from time to time, be required by the Entities and the Department Contract Manager for monitoring and evaluation purposes. Report formats will be submitted to the Department Contract Manager prior to the commencement of the contract(s) and must be approved by Department. The Contractor(s) shall also provide the Department Contract Manager with any other reports deemed necessary by Department. The Contractor(s)'s monthly reports shall contain the following:

- (a) Name of publication and/or name of the media form used with all expenses as agreed with Entity

- (b) Name of Entity
- (c) Advertisement number which identifies Entity by agency code followed by individual ad number
- (d) Advertisement title
- (e) Type of advertisement (e.g., display, classified, half-page, full-page, etc.)
- (f) Dimensions and total size of advertisement using Standard Advertising Units (SAU) only (unless Display Style #3 is expressly requested)
- (g) Lowest open rate from publication and or vehicle being used
- (h) Date and day of the week in which the advertisement appeared
- (i) Month/year of actual report
- (j) Advertisement insertion date
- (k) A complete summary report by Entity and a complete summary by publication
- (l) All reports will reflect actual prices of the advertisement placed. Estimates are not acceptable.
- (m) All production costs for advertisements placed other than in newspapers must be listed on invoice.
- (n) Internet posting must be listed under Entity name but separate from print advertisements.

Publisher's Cancellations

In the event the submitted advertisement is deleted from the publication at the publisher's discretion (i.e., "bumped"), the Contractor(s) will not be liable for the payment of liquidated damages, provided that appropriate documentation from the publication is submitted immediately to the Entity and Department Contract Manager.

Rates and Rate Changes

The Contractor(s) shall provide to all Entities and the Department Contract Manager, a rate sheet (rate cards) of all major publications used by Entities, listing the open rates for the publications and the discounted rates contained in the contract(s). These advertising rate sheets shall be updated within one business week from the time of a rate change. Upon request, the Contractor(s) will furnish an Entity with the open rates of any publication. The DEPARTMENT Contract Manager and the Contractor(s) will review base open rates for major newspapers prior to commencement of the contract(s).

Artwork

Except for display advertisement artwork, as provided in Section 5 above, the Contractor(s) shall not charge an Entity more than the cost to the Entity to place advertisement directly with the publication.

Advertisement Placement

The Contractor(s) shall place each advertisement submitted prior to the deadline for the media vehicle used regardless of the volume of advertisements.

Tear Sheet Attachment

All tear sheets must show date and name of publication along with advertisement. Original tear sheets must accompany an invoice mailed to the Entity placing the advertisement. Payments will not be made without original tear sheets. Copies of tear sheet will be acceptable for accompanying the monthly reports to the Department Contract Manager.

Standard Advertising Units

All classified or display advertisements (in publications) must be in Standard Advertising Units (SAU), unless otherwise expressly authorized in writing by the Entity (specifically for Display Style #3).

Contract(s) for Advertising Only

The Contractor(s) shall not accept any non- advertising orders under the contract(s). Invoices for any non-advertisement will not be honored. Non- advertising services are provided under a separate Citywide Non-Contract.

Vendor Billing

ELECTRONIC COMMERCE PROGRAM

The Department of Education (DOE) has implemented an electronic commerce program that will enable vendors to easily access account information and electronically submit invoices. Through the use of the Internet, vendors will be able to do the following:

- Check the status of outstanding invoices, payments and purchase orders.
- Submit invoices electronically so that payments can be made within 15 days.
- Accept and process purchase orders electronically from DOE sites.

Vendors participating in this program will be assessed a 2% service fee when payment is received within 15 days. If payment is not made within the 15 days, the service fee will be waived. The Discount for Prompt Payment of 2% described in Section 1.36 will not be charged to vendors enrolled in this program.

To participate, please contact the DOE Division of Financial Operations at the following e-mail address: e-commerce@nycboe.net

PAPER INVOICING PROGRAM

Vendors who elect to utilize paper invoicing shall invoice the Board of Education according to the following terms. The vendor will submit a monthly invoice indicating the total cartons received for storage, retrieval and pickup costs as specified in the contract and sent to offices. The costs submitted on each invoice should reflect only the services rendered for the Central Board of Education. **Note: Pickup points are subject to change.** Invoices are to be rendered on a monthly basis and sent to the following:

NYC Department of Education
Office of Payable Operations
65 Court St., Room 1301
Brooklyn, NY 11201
Attn: Central Business Office

Invoice shall show a summarization of the total number of packages picked-up and delivered with indication of the respective schools or offices ordering the service; with cost extended at the unit prices or award. Each invoice must be supported by, and have attached thereto, copies of the signed and dated receipt for both packages picked up and delivered as per paragraph entitled "Pick-up and Delivery Control, Shipping Slip" (See below).

NOTE: In the event a school (or other receiving agency) calls contractor with claim of non-receipt of delivery shortage or damage prior to submission of invoices with attachment as specified above, contractor shall have at hand, and make available immediately, a copy of signed receipt.

4.2. BID BLANK

<u>Item #1</u> New York Times Only (Print)	Department Contract Rate _____	x	<u>0.25</u> (Weight)	=	_____
<u>Item #2</u> New York Times Only (Website)	Department Contract Rate _____	x	<u>0.15</u> (Weight)	=	_____
<u>Item #3</u> Publications other than the New York Times	Department Contract Rate _____	x	<u>0.30</u> (Weight)	=	_____
<u>Item #4</u> Internet Sites (Excluding New York Times website)	Department Contract Rate _____	x	<u>0.30</u> (Weight)	=	_____
<u>Item #5</u> New York Times (Print + Website) + Publications other than New York Times + Internet Sites				=	\$ _____
					Total Bid Amount

END OF SPECIFICATION

SERIAL NO. B0559

DATE:

CONTRACT FOR FURNISHING AND DELIVERING

DISPLAY & CLASSIFIED ADVERTISING & MARKETING SERVICES

BETWEEN THE NEW YORK CITY DEPARTMENT OF EDUCATION

AND

CONTRACTOR

AMOUNT OF CONTRACT \$

SPECIAL SCHOOL FUND

CODE NO. _____

\$ _____

CONTRACT AWARDED _____

APPROVED AS TO FORM CERTIFICATION AS TO LEGAL AUTHORITY

ACTING CORPORATION COUNSEL
