

THE New York City DEPARTMENT OF EDUCATION
JOEL I. KLEIN, *Chancellor*



STANDARD FORM OF CONTRACT PROPOSAL

Serial No. B1039

DRINKING WATER AND INDOOR AIR QUALITY TESTING AND ANALYSES

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., Wednesday June 3rd, 2009

NO LATE BIDS WILL BE ACCEPTED

Mandatory PRE-BID CONFERENCE ON Thursday, May 7th, 2009 at 9:30 A.M.

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

**BIDS WILL BE PUBLICLY OPENED AND READ
On Thursday, June 4th, 2009 at 11:00 A.M.**

Only a 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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DEFINITIONS

The following terms have the specific meanings associated with them below:

- (a) "The Board" means the Board of Education of the City of New York or the Department of Education of the City of New York as a party to this Contract.
- (b) "The Contractor" is the vendor awarded and including his representatives and assignees.
- (c) "The Director/DSF" means the Chief Executive of the Division of School Facilities, or other person delegated by the Chancellor to supervise the work of this Contract.
- (d) "Executive Director of the Division of Contracts and Purchasing" means the person delegated by the Board to administer contracts and procurement
- (e) "The City" means the City of New York.
- (f) "The Comptroller" means the Comptroller of the City of New York..
- (g) "The Contract " means this document, the Standard Specifications, the Schedule Specifications, the Prevailing Wage Schedules and the Bid Blank(s).
- (h) "Other Contractor(s)" means any contractor (other than the party of this Contract) who has a contract with the Board for work on a building or site.
- (i) "The Chancellor" means the Chancellor of the Board.
- (j) "Drawings" means any and all drawings associated with this Contract, including all standard drawings, standard details, detail drawings, sketches, work plans, and other plans and drawings required for the completion of assigned work.
- (k) "Work" means all labor, work, and necessary actions agreed to be furnished or done by or on the part of The Contractor.
- (l) "Workers" means all labor, employees, supervisors employed by through this Contract, or at the request of the Contractor to perform any work in connection with the Contract.
- (m) "Subcontractor" means all subcontractors, consultants, subcontractor's employees and workers performing any work in connection with this Contract.
- (n) "Equipment": Anything used to complete the Work.
- (o) "Custodian" refers to the building manager or person authorized or designated to open or control the space where the Work shall be performed, and/or is responsible for the operation of the building who may be the custodian of the building, the building manager, or the building engineer.
- (p) "Borough Contract Manager" refers to the person delegated by the Board to provide oversight and management to the Contract Manager and will provide authority to the Contractor as necessary.
- (q) "Contract Manager" refers to the person delegated by the Board to monitor and ensure the Contractor complies with the terms of the Contract.
- (r) "Materials" means all material of any kind, nature and class as may be specified which becomes a part of or is used in the performance of the Work together with all manufactured or prepared materials, articles, accessories, appliances, appurtenances and parts used.

- (s) "Schedule Specifications " means the codes, standards and catalogs referred to, and all the directions and requirements applying to the work as hereinafter detailed and designated under specifications.
- (t) The "Standard Specifications" are the defined general disciplines, codes, standards and catalogs referred in the Schedule Specifications or in this document, and all the directions and requirements applying to the Work that the Contractor must follow.
- (u) "Bid" refers to the as all the documents required to be submitted for a specific bid which may be Bid Security, Contractor's certification of inspection of existing conditions or waiver of inspection forms, or any other document called required to be submitted with the bid.
- (v) "Site(s)" refers to the location(s) where the Work is performed as specified and directed in a Proceed Order or completed as provided in the Schedule Specifications at a facility that is used, occupied, managed or owned by the Board.
- (w) "State" means New York State.
- (x) "Shop drawings" are those drawings which are prepared by a contractor to define and explain the construction of work which will be constructed of the Work site and possibly in the Contractor's shop and which is intended, upon assembly, to be incorporated into the on-site work. These drawings must be approved by the DoE before the construction of the items is begun. Shop drawings are provided by the Contractor to the Board.
- (y) "Record drawings" refers to drawings that correct any changes in the construction drawing to better document the final and actual construction that was done. The Record Drawing are Board property and are delivered to the Board as part of the final invoice.
- (z) "Proceed Order" refers to the directive to do the specified item of Work at one or more of the designated Sites which are allowable by the terms of the contract.
- (aa) "CAP" refers to the Contractor's Application for Payment, one of the documents which must be filled in and submitted by the contractor when payment for completed work is being requested. This document, with its unique bar code and number, provides the means by which the billing package is tracked through the payment process.

SECTION 1
GENERAL INSTRUCTIONS

1.1 INTENT AND SCOPE

This is a requirements contract and is intended to provide, during the period of the contract, the means for repair, replacement and/or installation, of the products and services set forth in the schedules included herein (the "Work") for all schools, offices and other facilities and locations under the jurisdiction of the Board of Education of the City of New York (the "Board") in the geographic area set forth in the bid form.

The awarded Contractor may be issued a series of Proceed Orders which will order that specific work be performed at specific locations as provided for in the contract.

See additional information in Section 9 of the Technical Specifications

1.2 CONTRACT

The documents forming this Contract include the advertisement, Instructions to Bidders, specifications, schedules, bid form, amendments, and the agreement approved by the Board of Education. In case of a variance in information among the included documents, the agreement shall be controlling.

1.3 CONTRACT PERIOD

The proposed contract is for the period commencing on September 1st, 2009, or with the execution of the contract (whichever is later) by the Board of Education and will expire on August 31st, 2014. The contract may be terminated by the successful bidder(s) receiving award of contract three (3) years after the commencement of the contract, provided written notification is delivered by mail with confirmation of delivery, two hundred seventy (270) days prior to the first expiration date or on Month Date each year thereafter. All contract terms and conditions shall remain in effect for the full term of the contract and any extensions thereof.

Any Proceed Order issued prior to the expiration of the Contract will remain in force and be subject to the terms and conditions stated herein.

1.4 CONTRACT EXTENSION

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

1.5 WAGE RATES

If the Work of this Contract is covered by the provisions of New York State Labor Law Sections §220 or §230, the following provision(s) shall apply:

The Office of the Comptroller of the City of New York has certified wage rates, which rates have been established by him pursuant to the laws of the State of New York. The Contractor and every sub-contractor on contracts shall post in a prominent place on the site of the work a legible statement of all wage rates as specified to be paid for the various classes of mechanics, workers or laborers employed on the work.

Effective July 18, 2008, in addition to the existing prevailing wage rate law, Labor Law §220, section 220-h, all laborers, workers, and mechanics working on the site of public work projects of at least \$250,000 are required to be certified as having successfully completed the OSHA 10-hour Construction Safety and Health Course S1537-A.

The Bidder shall adhere to the following prevailing wage requirements:

Where the bid of the apparent low Bidder is lower than the bid of the next lowest Bidder by more than 10% or \$300,000.00, whichever is greater, the Board shall require the apparent low Bidder to provide proof satisfactory to the Executive Director that the apparent low Bidder will:

Pay its employees prevailing wages and provide prevailing supplements as required by the Labor Law, and

In determining whether a Bidder may receive an award, the Board shall consider whether the Bidder will comply with the requirements of the Labor Law concerning prevailing wages and supplements, or any other provision of law, and whether it will require its subcontractors to do the same.

1.6 OTHER THAN NORMAL HOURS:

The Contractor may be directed to perform Work in buildings under the jurisdiction of the Board on Saturday, Sunday, Holiday and Other Than Normal Hours of duty on business days. When the Contractor is so directed, the Department will waive school opening fees for the extra services entailed.

If the building or site is available for Work to be performed during Normal working Hours and the Contractor requests and receives permission to perform work on Saturday, Sunday, Holiday and Other Than Normal Hours of duty on business days, the Contractor shall be required to pay the Board for the duly authorized extra service entailed. The cost of this extra service is subject to changes in the Board's costs. Currently the fees are as follows:

After 5:00 P.M. on business day - \$41.00/hour

Saturday, Sunday and Holiday - \$41.00/hour (Four Hour Minimum)

Before 7:45 AM on business day - \$41.00/hour

Holidays are established by the Board and the School Year List is posted on the Department's Web Site. Normally included holidays are: NEW YEAR'S Day, MARTIN LUTHER KING JR.'S BIRTHDAY, GEORGE WASHINGTON'S Birthday (President's Day), ABRAHAM LINCOLN'S Birthday (Observed Date), MEMORIAL Day, INDEPENDENCE Day, LABOR Day, COLUMBUS Day, VETERANS' Day, THANKSGIVING Day and the Day after Thanksgiving, CHRISTMAS Day, GOOD FRIDAY, ROSH HASHANAH AND YOM KIPPUR.

For keeping the schools open for the benefit of Contractors, or for purposes or in a manner not clearly covered in the foregoing schedule and schedule conditions, the Executive Director of the Division of School Facilities or his/her designee is empowered to apply the most equitable rate or rates.

The Contractor is required to submit a permit form signed by an authorized representative of the Division of School Facilities. Where the fee is not waived, a certified check or money order made out to the Department of Education in the required amount shall accompany the permit form.

Under no circumstances shall the Contractor pay the custodian directly for building related services.

1.7 CONSUMER PRICE INDEX ADJUSTMENT TO ORIGINAL BID

The contract Bid Prices shall be in effect for the first year of the Contract. The contract prices will be adjusted on each anniversary of the Contract to reflect changes in the Consumer Price Index. The adjustment shall be calculated based on the U.S. City average Consumer Price Index of Retail Goods and Services for all urban consumers (CPI-U-All Urban Consumers), as published monthly by the United

States Department of Labor, Bureau of Labor Statistics, or if such index be discontinued, any substitute index mutually agreed upon by the parties hereto. The adjustment shall be calculated as set forth in the following example:

- a.: Original Bid Price = 1.0000
- b.: CPI for the month in which the original Contract term commenced = 126.0
- c.: Latest published CPI available as of the applicable anniversary date = 127.3
- d.: Adjusted Bid Price (effective on the first day of the renewal period)
- e.: Calculation: $d = a \times (c/b) = 1.0000 (127.3/126.0) = 1.0103$

The Board will calculate the adjusted Bid Price annually and adjust and approve the then current adjustment factors.

The adjusted Bid Prices that are in effect on the date the Proceed Order is issued shall be used to calculate the cost to perform that Proceed Order.

1.8 USE OF SUBCONTRACTORS

The use of any Subcontractors on this contract must be approved in advance by the Board.

All Subcontractors must be approved by the Board before they perform any Work.

The type and amount of work that is permitted to be subcontracted is specified in the Technical Specifications.

1.9 AFFIRMATION OF RESPONSIBILITY AND PAID TAXES

The Contractor affirms and declares that it 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.

1.10 PLACE OF BUSINESS; NOTICE TO CONTRACTOR; CORRESPONDENCE

The Contractor's address as entered in the Bid documents, is designated as the place where all notices, letters and other communications directed to the Contractor shall be served, mailed or delivered. Nothing herein contained is deemed to preclude or render inoperative the personal service of any notice, letter or other communication to the Contractor.

1.11 AVAILABILITY OF FUNDS

In the event that the period of any resulting award extends beyond the end of the current fiscal year, and in specific funding situations, the issuance of Proceed Orders may be subject to the availability of funds in succeeding fiscal years.

1.12 PROCEED ORDERS

The contractor's performance of Work shall not obligate the Board to pay for that work unless the Work is preceded by a written Proceed Order, signed by an authorized DSF employee or a designee of the Executive Director. Proceed Orders will include a scope of work and its location and other specific

instructions for the particular performance of that Work. Proceed Orders may be issued throughout the Contract period.

1.13 PAYMENT POLICY

The Chancellor has made prompt vendor payment an administrative priority of the Board. Substantial effort will be made to pay all bills promptly.

1.14 GIFTS AND GRATUITIES

The Contractor shall not give any gift or thing of value, whether in the form of services, loan promise, offer of employment 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. 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 contracts.

1.15 CONFLICTS OF INTEREST

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 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) 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.

No Board 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 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.

No officer or employee of the Board, 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).

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.

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.

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 Contract, or has been employed or retained to do so, for a commission, percentage, brokerage fee or contingent fee.

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 Contract. The phrase "gift or thing of value" shall include, without limitation, money, tangible goods, services, loans, promises or negotiable instruments.

If the Contractor violates any provision of this paragraph, the Board may, at its option: (1) cancel and terminate this Contract 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.

The Contractor shall adhere to the Board of Education's 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.

The Contractor shall upon the request of the Board, complete a Conflicts of Interest Statement and Disclosure Statement (Rev. 5/13/99).

1.16 SALES AND MARKETING LITERATURE

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

All such literature must be limited to the Work 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.

SECTION 2
INSTRUCTIONS TO BIDDERS

2.1 CONTRACT DOCUMENTS EXAMINATION BY BIDDERS /INQUIRIES

Bidders must examine the bid documents and Contract and satisfy themselves as to the Work required. Bidders must from personal examination of the sites of the proposed Work and the surroundings thereof, make their own estimate of the facilities and difficulties to be encountered in performing the proposed Work. No Bidder shall at any time, dispute or complain of the quantity of the Work required, nor of the difficulties encountered nor assert that there was any misunderstanding in regard to the quantity or quality or kind of materials to be furnished or Work to be done.

If any person contemplating submitting a bid for the proposed Contract is in doubt as to the TRUE MEANING, OR BELIEVES THAT THERE IS AN ERROR, DISCREPANCY, INCONSISTENCY, INDEFINITE DESCRIPTION, OR AN IMPOSSIBILITY OF PERFORMANCE, of any part of the bid documents, the Bidder MAY SUBMIT to the Executive Director a written letter which explains in detail any information which may be available on this discrepancy and asks for a clarification of the meaning of the text at error. Questions will NOT be accepted or answered via telephone. The person submitting the request will be responsible for its prompt delivery. Interpretations and supplemental instructions will be in the form of a written Amendment which, if issued, will be made available not later than three (3) days prior to the date fixed for the opening of bids. Failure of any Bidder to receive any such Amendment shall not relieve it from any obligation under its bid as submitted. All Amendments so issued shall become incorporated and a part of the Contract.

Written questions must be submitted to:

New York City Department of Education
Division of Contracts and Purchasing
Student Services Procurement – 13th floor
65 Court Street
Brooklyn, New York 11204

Email: sepstei@schools.nyc.gov

2.2 PRE-BID CONFERENCE:

A **mandatory** pre-bid conference, at which Bidders will have the opportunity to ask questions related to this RFB, will be held on May 7th, 2009 at 9:30 AM at 65 Court Street, Brooklyn NY 12th Floor Conference Room.

2.3 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 the Bid, the **Bid Serial No.**, the date of its submission and the title of the Request for Bid.

ALL BIDS MUST BE COMPLETED IN INK.

2.4 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:

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 a competitor;

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

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.

2.5 BID SUBMISSION FORM

Bidder must submit its Bid on the bid form provided, together with any amendments.

2.6 BID OPENING

On the date, time and place designated, the bids received will be publicly opened and read aloud. The Executive Director, reserves the right to waive any informalities if deemed in the best interest of the Board.

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

2.7 LATE BIDS

Bids which arrive late will not be accepted and will be returned to the Bidder unread. Bids sent by mail, overnight carriers, messengers, etc., **are delivered at the risk of the Bidder.**

2.8 BID DEPOSIT

No bid deposit will be required for this bid.

2.9 TIE BIDS

In case of low tie bids from responsive, responsible Bidders, the Executive Director 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 be present at the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

2.10 WITHDRAWAL OF BIDS

After the opening of bids a request by a Bidder to withdraw its bid because of an error made by the Bidder will be considered only under the following terms and conditions:

The request to withdraw the bid must be in writing and must provide the reasons for the request. This request must be sent to the Executive Director within five (5) business days following the opening of bids.

The Board may grant or reject such requests 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 the 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, the Bidder shall be disqualified from bidding on Board 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 its bid before the expiration of one hundred eighty (180) calendar days from the bid opening. A Bidder may withdraw its bid after that time only if it states such intent in writing prior to the mailing by the Board of a Purchase Order, Notice of Award, or Acceptance of Bids.

The Executive Director will make the determination with respect to accepting the request to withdraw a bid and that determination shall be final and binding. A partial withdrawal of bid for an aggregate class may be permitted if deemed in the best interest of the Board. A request for partial withdrawal of a bid with respect to an item will not be permitted.

2.11 BIDDER'S QUOTATION

Bidders are required to complete the bid form in ink. The use of pencils to fill out the bid documents shall result in the rejection of the bid. **Bidders who change or alter entries, including cross-outs and white outs, must submit with their bids a letter attesting to the fact that the changes were made. Failure to do so may result in rejection of bid.**

The Board is exempt from Federal, State and City taxes and excise taxes. All prices bid must exclude any Federal, State and City sales or excise taxes or fees.

2.12 ESTIMATED QUANTITY

The estimated quantity of an item, if any, as indicated in the schedule is an approximation of one year's requirement of that item based on past experience, and the future yearly use of that quantity is not binding on the Board. The Board has the right to order any quantity which the Executive Director, deems appropriate.

Contractors cannot refuse to deliver any Work even if the quantities ordered exceed the estimated quantity.

2.13 UNIT OF MEASURE

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

2.14 VOLUNTARY PRICE REDUCTION

The Board reserves the right to request a voluntary Price Reductions in the event that any portion of the bid is deemed to be unbalanced.

2.15 REJECTION OF BIDS

The Board 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.

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

A. The Board reserves the right to reject any or all bids.

- B. No award will be made to a Bidder who fails to submit the qualification statement disclosing the facts required herein, or a Bidder whose statements disclosed in such qualification statement are found to be untrue.
- C. Any statement or declaration made by the Bidder found to be untrue is sufficient cause for rejecting the bid.
- D. The Board may reject any bid which does not conform to the requirements of the bid documents. The Board, however, reserves the right, if it is in its interest, to waive informalities in a bid, or failure to comply with all requirements of the bid documents.

The Board may reject any bid upon its determination that it is submitted by an irresponsible Bidder.

If more than one bid submitted by a Bidder is under consideration for award of contract by the Board, or if the Bidder currently holds a similar contract, the Board will determine which contract or contracts shall be awarded to the Bidder and which of its bids should be rejected.

2.16 CATALOG REFERENCE

When a catalog reference follows the description of an item number on the bid from, 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's catalog and are to be regarded as part of the description of the item.

2.17 DESCRIPTION OF ITEMS

For details as to the quality and quantity of the Work, services and materials to be furnished, delivered or constructed, bidder is referred to the specifications and/or bid form. Bidder is advised to review specifications prior to submitting its bid.

Specifications contained herein are intended to explain 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. Questions regarding specifications should immediately be brought to the attention of the Executive Director, in writing, prior to submitting the bid. Notwithstanding any ambiguity or incompleteness of the specifications, upon award of contract, The Contractor assumes full responsibility for furnishing and delivering the items awarded.

2.18 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. 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 until the expiration of the Contract, including extension periods, when applicable.

Each item submitted must be identified with the following information:

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.

2.19 ALTERNATE ITEMS

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

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

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

2.20 AWARD - SEE ADDITIONAL INFORMATION IN SECTION 9 SPECIAL TERMS AND CONDITIONS

Award, if made will be to the lowest responsive, responsible bidder

2.21 BIDDER'S QUALIFICATIONS

Bids will be accepted **only** from firms which are actively engaged in the manufacture or sale of the commodities and/or services specified or in the construction or service of the work delineated in the specification. The 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, equipment and staffing 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 who does not meet all the specifications and requirements stated herein.

Bidder must have 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.

References - may be requested which attest to the bidder's reliability and ability in performance of contracts of similar size and scope and nature.

2.22 FINANCIAL STANDING

Bidder may be required to provide annual financial statements which may include its most recently completed fiscal year. The DOE reserves the right to request additional information or documentation from the bidder as deemed necessary in determining qualifications, capability or financial stability. Examples of financial statements may include but not limited to a balance sheet, income statement, statement of

earnings and/or letters of credit from financial institutions. The bidder must be financially stable and able to substantiate the financial statements of its company.

If the bidder has not been in business within the last three (3) years, the bidder may be required to submit tax returns (personal and/or corporate) for the last three (3) years. This statement may include a balance sheet, year to date and a statement of profit and loss year to date.

These financial statements must give evidence satisfactory to the DOE that the business will have sufficient working capital to meet the ongoing expenditures once services begin and prior to the onset of contract payments. The DOE reserves the right to reject any bidder who does not demonstrate financial capability sufficient for the scope of the solicitation.

2.23 NOTICE OF AWARD

The mailing by the Board to the undersigned Bidder at the address herein specified of a Notice of Award shall form a Contract between the Board and the Bidder to furnish and to deliver the Work set forth herein.

2.24 CRIMINAL CHARGES

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

SECTION 3
WORK RELATED INSTRUCTIONS

3.1 INTERPRETATION

The Director/DSF shall in all cases determine the amount, quality, acceptability and fitness of the several kinds of materials delivered and work performed and shall determine the answers to any questions in relation to the work and fulfillment of the contract and methods to be adopted.

3.2 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.

3.3 LOCATION OF WORK/ WORK BY OTHERS

The title of this contract notwithstanding, under special circumstances the Contractor may be required to perform Work at any location within the five (5) boroughs. Work shall be performed at the location specified in the Proceed Order.

- (A) During the life of this contract, the Board of Education reserves the right to assign similar or related work to its own shop mechanics or other agencies- such as SCA or contractors if the Director/DSF determines that such action is in the best interest of the Board.
- (B) If necessary, and based upon the inability of others to perform or the absence of a contract for that particular area or region, the Division of School Facilities may issue Proceed Orders to this Contractor for similar work in other Boroughs at the bid price of this contract.
- (C) If this Contractor is unable to perform all Work assigned in a timely manner, due to heavy volume of orders issued by the Board, or as the result of the contractor's failure to deploy sufficient number of workers and crews, the Board may issue Proceed Orders to other contractors. This action will not prejudice the Board's rights to pursue all remedies against this contractor for non-performance.

3.4 WORKMANSHIP AND QUALITY

The workmanship and quality of material shall be as specified in the technical specification section and installed in accordance with the best standard trade practices. The Board of Education reserves the right to accept or reject any workmanship and/or quality if deemed in the Board's best interest.

3.5 COMPLETION TIME

Time is of the essence in performing all Work. The Contractor shall complete each Proceed Order in the time set forth therein. Failure to complete the Proceed Order on time may result in an administrative determination that the Contractor is in default on its obligation and may be deemed an irresponsible Bidder, thereby precluding it from bidding on future proposals for the Board.

3.6 REQUEST FOR EXTENSION OF TIME

The Contractor may submit a request to the Board for an extension of time to complete the Proceed Order, if the Contractor is delayed by one of the following causes:

- A. Any act or omission of the Board;
- B. Any act or omission of Other Contractors, except necessary normal interruptions.
- C. Labor strikes not caused, instituted or provoked by the Contractor or any of his Subcontractors;
- D. Emergency conditions delaying or making performance temporarily impossible or illegal;

Such requests will not be considered unless the Contractor submits a complete explanation for the delay, including the status of the work when the delays occurred, the reason for the delay, proof as to what extent the work was held up by each particular delay, and if any weather conditions are involved.

The Contractor will not be granted an extension of time as a result of necessary suspensions and normal interruptions to the Contractor's Work to enable Other Contractors to perform their work if such suspensions and interruptions were taken into consideration in fixing the original schedule for completion.

3.7 COMPETENT WORKERS

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

3.8 SUSPENSION OF DELIVERIES

The Executive Director reserves the right to suspend the Work or any part thereof, if it is deemed in the best interest of the Board to do so. The Executive Director shall make such directives in writing. The Contractor is not entitled to damages for any such suspension.

3.9 NON-DELIVERY – REJECTIONS OF WORK

If the Contractor fails to perform the Work within the time specified or if the Work is rejected by the Executive Director as not conforming to the specifications, the Executive Director may arrange for the completion of such Work or any part thereof on the open market. The Contractor shall reimburse the Board for any increased cost over the original contract price which occurred as a result of the need to use an alternate method for securing the work.

3.10 MATERIAL AND EQUIPMENT SHALL BE NEW

All material and equipment shall be new and unused. No rebuilt, modified, refurbished, re-manufactured or newly manufactured with used parts, material or equipment will be accepted unless otherwise specified in the Proceed Order.

3.11 PACKING

When using a chemical product, its Material Safety Data Sheet (MSDS) must be enclosed with each individual item and copies must be delivered to the Custodian Engineer and the Contract Manager, and a receipt signed to confirm the delivery.

3.12 DRAWINGS AND SPECIFICATIONS

The Contractor shall submit Shop Drawings and catalog cuts of all Equipment and components upon request from the Board. The Shop Drawings and catalog cuts shall fully detail the items and give complete performance and operating characteristics of the item. The Contractor shall also provide Record Drawings of the Work performed if requested by the Board.

After completion of the Work, the Contractor shall return all Board drawings (including but not limited to Shop and Record Drawings), manuals, diagrams and documents associated with the Work and Site. The Contractor shall update the drawings and wiring diagrams to reflect any changes and modifications effected as part of the Work performed. Any access codes for equipment connected with the control system, computers, etc shall remain the property of the Board. The Contractor shall change all security and access codes and give these new codes with

required training as applicable to the designated representative of the Board. The Contractor shall not retain any code to itself without authorization.

3.13 POST AWARD SUBSTITUTIONS

If a priced item of Work is no longer available from a 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:

- A. Written documentation evidencing the manufacturer's discontinuance of production or change of Model Number or description of the item must be submitted together with the revised specifications stating changes and/or samples with original and new list price to the Director/DSF.
- B. When the substitute item has been determined by the Director/DSF to be of equivalent quality and durability and of equal or lower price to the original item, such determination by the Director/DSF, shall be final, binding and conclusive on the Contractor.

All requests for substitutions must be submitted in writing to the Director/DSF 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/DSF. If a substitute item is delivered without prior written approval, liquidated damages as well as inspection and re-inspection charges shall be imposed.

3.14 PROVISION FOR ADDITIONAL ITEM-MODELS

During the Contract period, additional product line supplements that had not been specified as items on the bid form may be accepted as additional items. The acceptance of product line, supplements or additional items is at the discretion of the Director/DSF. 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 reserves the right not to award or add items for which prices are deemed high and not in the best interest of the Board.

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

3.15 GUARANTEE AND WARRANTY

In submitting a Contractor's Application for Payment, the Contractor does thereby warrant all Work to be in full and complete accordance with the requirements of the Contract, and that all Work is 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,

Except as hereinafter provided, the warranty period for each Proceed Order shall commence on the date on which the Borough Contract Manager certifies that the Work of such Proceed Order has been satisfactorily completed.

The warranty shall continue in full force and effect for a period of one (1) year, except for those items where a longer period of warranty is specifically stated in the specifications and/or Schedule or is guaranteed by the manufacturer for a longer period, or is otherwise generally provided or required in connection with a particular material or piece of equipment.

The Contractor shall provide the Board with any warranty certificates, special tools, spare parts etc. that may be needed, specified or supplied by the manufacturer as part of the material or equipment. The Contractor shall obtain and submit, with the application for final payment of the Proceed Order, all manufacturer's guarantees and warranties for new material and equipment installed or as required by this contract. The Contractor shall include in these documents the names and addresses of any local firms which may provide the required service of the material and equipment.

3.16 IDENTIFICATION AND SECURITY REQUIREMENTS

- A. All Workers at the Site including but not limited to, the Contractor's Workers and Subcontractor's, workers shall sign in and out at the school security desk upon every entering and leaving of the Site. The Contractor must state the number of Workers and Subcontractors engaged in working on Site and the locations within the building where they will be working at the Site. The Contractor shall comply with all reasonable requests from school security and other designated personnel as directed.
- B. The Contractor is required to submit to the Custodian work sheets at the end of each workday.
The work sheet shall give the names, ID's, and titles of all Contractor's and Subcontractors' Workers and employees engaged in working on Site, and list Materials actually installed during the workday.
- C. The Contractor shall provide photo identification badges for all Workers at the Site, including but not limited to all Subcontractors. The Contractor is on notice that any employee of the Board has the right to inspect the badge. If the Contractor's Worker(s) or Subcontractors refuse to display or produce a badge for examination, the Custodian shall notify the Contract Manager, and the Contractor may be directed to remove its Worker(s) or Subcontractors from the Site until the badge is produced.
- D. Identification badges must be worn on outer clothing, conspicuously displayed at all times when present on the Board's property. The badge shall include the following: Contractor's name; Worker's name; social security number; date of birth; height; weight and photograph. Subcontractor's badges shall display the same information.
- E. The Contractor is responsible for the implementation and enforcement of all security and identification requirements of its Workers and Subcontractors.

3.17 TIME AND MATERIAL WORK

- A. For items or materials supplied and installed for the Work which will be paid for on a Time and Material basis, the Board will reimburse the Contractor for the parts and materials actually used, at the actual invoiced price plus mark up as bid, if any. The Contractor shall submit the original invoices. If any material is used from Contractor's bulk stocks, the Contractor shall submit either the original invoice for the bulk purchase for verification to the Borough Contract Manager who will negotiate an agreement on unit prices for the items used, or the Contractor shall submit, to the Quality Assurance Unit a list of the items proposed to be issued from bulk stock along with pricing and the Change Order Unit will negotiate an agreed on price. The Contractor shall ensure that all parts and material are purchased at competitive rates. The Board reserves the right to review submitted invoices for material and pricing and to reduce payment, should the cost indicated be unsupported by current market pricing information available for the items. When such deductions are taken, the Board may issue the Contractor an exception letter indicating the basis for the deduction or write the reason on the face of the returned CAP document.
- B. The Contractor shall deploy competent Workers under appropriate supervision and shall plan, schedule, and execute the Work to achieve productivity comparable with industry standards. Notwithstanding work tickets signed at the site indicating the hours spent by

Contractor's employees, the Board reserves the right to review such claims and to make a deduction to the claimed hours to reflect such standards. The Board reserves the right to evaluate the productivity of the Workers engaged performing the Work. If instructed in writing, the Contractor shall replace any Worker whose performance on the job is determined to be unsatisfactory by the Board or the Director.

The Contractor is responsible for notifying the Contract Manager of any delays which may affect its ability to complete the Work as scheduled which would impact costs or usability of the Work as soon as they occur.

3.18 PERMITS, FILING, EXPEDITOR FEES

The Contractor shall complete all applicable filing formalities, paying of fees and meeting of all expenses to obtain permits in a timely manner. The Contractor shall submit copies of all documents, and provide updates on the progress of obtaining certifications and permits. The Board shall reimburse the Contractor for the above expenses actually incurred plus mark up as indicated in (B) below. The Board shall provide a "waiver of fees" request letter as necessary to facilitate and obtain permits from other New York City agencies, if applicable.

The Board shall pay the Contractor a mark up of 10% over the actual expenses incurred in filing and obtaining permits and certificates after verification of actual invoices. However the maximum amount payable for expeditor expense shall not exceed 10% of other filing and permit expenses and will be subjected to a maximum of \$150.

3.19 WORK NOTIFICATION AND PROCEDURE

The Contractor shall notify the Borough Maintenance Unit, school custodian and school principal in writing, 72 hours in advance of scheduled date for start of operations. For certain work affecting school operations, BOE may require more advance notice in certain cases.

The Contractor shall exercise all safety precautions while performing the Work. Any damage to the property as a result of the Contractor's Work shall be replaced or repaired by the Contractor at no cost to the Board.

3.20 INSPECTION OF WORK

The Work required to be performed and furnished by the Contractor shall be under the direction of the Director/DSF. Inspectors will reject any part of any Work, if the same does not comply with the requirements of this Contract or any Proceed Order. Inspector will direct such Work be taken down and removed and new acceptable Work performed all at the expense of the Contractor.

Where Inspectors reject Work because it does not comply with the requirements of the Contract or any Proceed Order, the Contractor agrees to be assessed the sum of five hundred dollars (\$500) as liquidated damages, for each re-inspection of the new Work. This is in addition to and not in lieu of any procedures which may lead a Contractor to be declared irresponsible and/or defaulted by the Board or liquidated damages for delays.

3.21 CLEAN UP

When the Contractor completes the Work, it shall thoroughly clean-up all debris and rubbish resulting from its Work as required to restore the Site areas to the state of cleanliness existing before the Work began. In general, cleaning requirements are limited to the removal of rubbish, spatters, stains, smears, foot tracks, etc. Where work that causes the dissemination of dust is performed, cleaning requirements shall include but is not limited to, all other operations necessary to remove the dust. Performing dust creating work, the Contractor shall provide dust tight enclosures and foot mats to minimize the spread of dust and foot marks. This final clean-up is in addition to the required daily removal of rubbish. The Contractor shall protect drains and fixtures

from clogging due to the Work under this Contract and is required to clean all drains, fixtures, traps, etc., clogged because of its neglect.

A. Except as otherwise noted, Contractor shall provide receptacles of adequate size and number in locations near to or in the Work areas and Site, or as designated by the Custodian, to receive general interior rubbish resulting from the work. The Contractor shall remove contents of all general interior rubbish receptacles and shall provide all labor and trucking necessary for collection and removal of such rubbish from the Site. The Contractor is responsible to have the areas around each receptacle made broom clean at end of each day's work.

B. Contractor shall collect and remove from premises:

- (1). All pipes, fittings, conduits, wiring, duct work, radiators, fixtures, equipment, sheet metal, roofing, windows, and other specific rubbish resulting for the Work.
- (2). All rubbish of any type and description, resulting from the Work in boiler rooms, equipment rooms and fan rooms.
- (3). All rubbish of any type description resulting from any and all of its exterior Work. The Contractor shall collect all remaining rubbish resulting from the Work and deposit same in receptacles. Accumulated rubbish shall be removed from the Site at the end of each day's work.

C. No rubbish may be thrown down dumbwaiters, dust chutes, and other shafts nor is rubbish thrown from windows, roofs, and other points above grade.

Clean up procedures and other precautions required as per dust control protocol will comply with **A, B, and C above**.

3.22 PROTECTION OF PROPERTY

The Contractor shall exercise all precautions while performing the work. Any damage to Board property as a result of the Work shall be the sole responsibility of the Contractor and shall be promptly repaired by the Contractor at no cost to the Board. The Board reserves the right to make required repairs and deduct the full cost of the repairs, , including overhead from the Contractor's application for payment.

3.23 TRAFFIC COORDINATION

Contractor shall schedule and perform work on or near streets so as to limit restriction of traffic lanes to minimum consistent with safety and requirements of work being performed. Also, Contractor shall make maximum effort to expedite flow of traffic past any unavoidable restriction. Also, during peak traffic periods, Contractor shall avoid obstructing any traffic lane required for free flow of peak traffic, except in cases of outmost emergency. Also, Contractor shall protect areas he has restricted to traffic with warning devices and barriers to alert oncoming drivers and to permit orderly adjustment of traffic in advance of road restriction.

3.24 STANDARD SPECIFICATIONS AND SCHEDULE SPECIFICATIONS DEFINED

The Standard Specification for Electrical Work, 25th Edition, 1984 including Revision 1. In addition to the above, the New York City School Construction Authority's Standard Specification (current edition, which incorporates revisions agreed to by the Board and the SCA to update the standards) referred hereinafter as "Standards", together with the Schedule Specifications, state the material and workmanship requirements of this Contract.

Any specific clause or condition in the schedule specifications shall amend those in the Standard Specifications to conform to the Contract requirement. When a portion of the standards is modified the remainder of that paragraph shall remain in effect. Where no modification, deletion or addition is specified each standard paragraph in its entirety shall remain in effect. When any specific condition of the Standards and specifications is found in variance with each other the most stringent shall apply. The Director shall have the option to choose in the event of any dispute.

The General Conditions of the Standards together with portions of the standards noted in the schedule specification, supplementary general conditions, standard details, Contract drawings and any amendments /addendum to the above shall be applicable to all work of this Contract. All reference to "General Contractor" shall mean this Contractor.

Whenever references are made to specific sections and/or paragraphs of the NYC School Construction Authority Standard Specifications (current edition), contract drawings and amendments and addenda, these documents shall be deemed incorporated into the Contract.

Copies of the Board Standard Specification are available on the DSF WEB Site and the SCA Standard Specifications and Standard Details are available on the School Construction Authority Web site to Contractors with active awarded contracts by the Board. The Board will facilitate access to these documents.

3.25 PAYMENT PROCEDURES

The Contractor shall comply with all of the Board's procedures to apply for payment and will supply any submissions required to DSF. This includes, but is not limited to, all documents, certifications and receipts required by the Contract and any additional documentation deemed necessary for payment, as requested by the Board or as required by law. Copies of forms and documents, currently in use, such as the CAP, payroll report, affidavit etc. required to be submitted for claiming payment are available upon request

The Contractor shall submit a list that sets forth the exact locations and description of the Work performed with each CAP for Board approval for payment. The description of work must conform to the Work authorized pursuant to the corresponding Proceed Order. No unauthorized work will be approved for payment.

All original bid prices, terms and conditions of this Contract will remain unchanged throughout the period of the Contract except as otherwise provided.

The Contractor shall submit CAPs within forty-five (45) days from the date of substantial completion of the Work per Proceed Order. Late submission of CAPs may indefinitely delay or deny payment. The Contractor must cooperate with the City's budget and fiscal procedures and submit CAPs as set forth herein.

The Director may inspect the Work which independent auditors may verify. If the Contractor is advised of a defect in workmanship or quantity of Work performed, the Contractor has thirty (30) days from the notification to complete the corrective action unless an extension of time to complete the corrective work is granted in writing. Failure to complete the corrective work as directed in the exception letter in a timely manner may result in a permanent deduction in payment. When the corrective work is complete, the Contractor shall submit a revised application for payment.

Payment against a CAP or omission of a defect by the Contract Manager during inspection shall not relieve the Contractor of its responsibility to make necessary corrections.

The Contractor's CAP shall indicate information from the Proceed Order, Change Orders if any and giving quantities and unit prices applicable and approved for the Contract.

The Contractor shall submit a copy of the "Building Material Data Form" with its CAP. The form shall indicate all areas and items worked on at the site.

This Contract and all payments are subject to audit by the Board and post audit by the Comptroller in accordance with all applicable New York State and City laws, rules, and regulations.

3.26 USE BEFORE COMPLETION

If before the completion of all the Work it is deemed necessary by the Board to take over, use, occupy or operate any part of the completed or partly completed Work or the Site where the Work is being performed, the Board shall have this right and the Contractor will not in any way interfere with or object to the use, occupation or operation of such work by the Board.

3.27 COORDINATION WITH OTHER CONTRACTORS

During the performance of the Work, Other Contractors may perform other work or other contracts at the same Site(s) as the Contractor. The Contract Manager shall coordinate the performance of the Work with the work of Other Contractors and the Contractor shall fully cooperate with Other Contractors as directed.. The Contractor shall not commit or permit any act which will interfere with the performance of work by any Other Contractor.

If the Contract Manager determines the Contractor is not coordinating the Work with the work of Other Contractors as directed, the Contract Manager has the right to withhold any payments due until the Contract Manager's directions are complied with by the Contractor.

The Contractor may notify the Contract Manager in writing if Other Contractors at the Site are failing to coordinate their work with the Work of this Contract or relevant Purchase Order. The Board is not liable for any damages suffered by this Contractor due to the Other Contractor's acts, omissions, or failure to comply with the directions issued by the Contract Manager or the Director, or the Other Contractor's default in performance.

3.28 CHANGE ORDERS

If the Contractor is directed to install work that is different than the Work specified, the price for such work will, if not priced in a unit price schedule or construction task catalog, be negotiated and subject to the approval by the Division of Contracts and Purchasing, a Change Order will be issued by the Executive Director. Change Orders shall reflect all costs for the extra work and shall be governed by the conditions and terms of this Contract. Except for Time and Material Change Orders, which will be issued under the direction of the Director/DSF for those situations where the work must be done forthwith for the safety and security of personnel or property, no Change Order work will be started before a Change Order is approved and the price accepted by all parties.

Time and Materials

Change Orders may be issued, to be paid for on a Time and Material basis in situations requiring immediate attention by the contractor where there is no time to negotiate pricing. The Contractor will be required to document all labor, materials and equipment used. The Contractor will be paid all direct and indirect costs as documented with an allowance of 10% for overhead and 10% for profit for all work performed by its own forces.

Unit Price Agreement

The Contractor shall be reimbursed for installed items of work at the price per unit agreed

Lump Sum agreement

The Contractor shall provide a detailed statement of the work to be done, and an itemized list of materials, equipment and labor which will be necessary to perform the Work. The

proposal will be discussed and negotiated and a lump sum for the Work will agreed on between the Board and the Contractor.

3.29 TEMPORARY SUSPENSION

The Board reserves the right to suspend for a specified time or delete one or more schools or locations from this Contract.

3.30 INTERIM EVALUATIONS

The Contract Manager shall evaluate the performance of the Contractor on each Proceed Order. _ If the Contractor receives an unsatisfactory or marginal rating on any Proceed Order, the Contractor will be notified and given an opportunity to respond.

If, the Borough Contract Manager determines the Contractor's performance on a Proceed Order is not in compliance with the Contract after reviewing the Contractor's response (if any), the Borough Contract Manager will issue a written "Warning of Poor Performance" to the Contractor.

3.31 FINAL EVALUATION

The Borough Contract Manager shall evaluate the performance of the Contractor within thirty (30) days after completion of all Proceed Orders. If the Contractor receives an unsatisfactory or marginal rating, the Contractor will be notified and given an opportunity to respond.

If the Borough Contract Manager determines that the Contractor's performance is not in compliance with the requirements of the Contract after reviewing the response (if any) the Borough Contract Manager shall advise the Executive Director of the determination, with recommendations.

If the Executive Director determines after reviewing the evaluation(s) and recommendation(s) of the Contract Manager and Borough Contract Manager , and the response, if any, of the Contractor, that the Contractor's performance is not in compliance with the requirements of the Proceed Orders or Contract, The Executive Director may issue a Determination of Poor Performance barring the Contractor from bidding for a period of up to two (2) years from the Contractor's receipt of such notice.

The Contractor shall have the right to appeal the determination of the Executive Director of the Division of Contracts and Purchasing. The Contractor must notify the Division of Contracts and Purchasing in writing within five (5) business days of receiving the Determination of Poor Performance.

The Contractor understands appealing the Determination of Poor Performance to the Division of Contracts and Purchasing may result in the following:

- A. If the Division of Contracts and Purchasing accepts the Contractor's appeal and agrees with the Contractor, the Determination of Poor Performance will be rescinded.
- B. If the Division of Contracts and Purchasing sustains the determination, it will issue a decision that may bar the Contractor from bidding for a period of up to two (2) years, unless in connection with its findings, a lesser penalty is imposed by reason of mitigating circumstances.

SECTION 4
PERFORMANCE RELATED ISSUES

4.1 DELAY BY THE BOARD OF EDUCATION

If the Contractor is delayed in performing Work by an act of omission of the Board, the time allowed for completion shall be extended by the period of such delay. A written determination establishing such delay by the Executive Director shall be binding and conclusive on the Contractor. The Contractor is not entitled to damages for any delay.

When the Contractor is delayed in performing the Work 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 time for performance may be extended by the period of such delay provided the Contractor notifies the Executive Director within 24 hours in writing of the causes of the delay.

The Executive Director shall ascertain and determine the facts and extent of delay. The Executive Director's written determination shall be binding and conclusive on the Contractor. Should such delays inconvenience the Board by creating an emergency, the Executive Director shall have the right to obtain the Work from another contractor, and the Contractor will be relieved of the necessity of furnishing such Work.

The granting of an extension of time to perform the Work for any reason shall not be deemed a waiver by the Board of its right to prompt performance, or of its right to enforce the other provisions of this Contract. Such extension of time is not an admission by the Board that it was responsible for any delay.

4.2 UNSAFE WORK PRACTICE – OPTION TO CORRECT

If the Director/DSFD determines the Contractor at any time neglects to perform any portion of the Work required by this Contract or any Proceed Order where safety and proper construction are endangered and not rectified including potential and actual damage and injury that may result to life and property, the Director/DSF has the right without notice to the Contractor, to correct all imperfect Work and deficiencies arising by reason of such neglect. The expense and cost of correction will be charged against the Contractor, and may be deducted from any payment or money which is due or subsequently will become due under this Contract. The decision of the Director/DSF in all instances is final, conclusive and binding on the Contractor. No action taken by the Director/DSF shall release the Contractor from any and all consequences and damages which may arise owing to such neglect, whether willful or by omission.

4.3 DEFECTIVE WORK – RIGHT TO ACCEPT

If the Board determines that there is a need to interrupt the progress of the Work or Proceed Order for the removal and replacement of defective or damaged Work, the Board has the right to accept the Work as furnished and to deduct from the Proceed Order price an amount determined by the Director to cover the cost of having the defective Work removed or replaced, or any incomplete Work performed or other deviation from the Contract or Proceed Order requirements corrected by others.

4.4 LIQUIDATED DAMAGES

The Board may assess liquidated damages for each day after the scheduled completion date the Work of a Purchase Order is not complete.

The liquidated damages shall be five percent (5%) of the Proceed Order amount for each day of delay.

If any part of the Work fails to function properly within fifteen (15) calendar days after the Proceed Order was accepted, it shall be deemed that the Contractor did not complete the Work within the time specified, and liquidated damages shall be assessed in the amount of five percent (5%) of the Proceed Order price for each day such part of the Work fails to function properly.

4.5 ADMINISTRATIVE COSTS OF THE BOARD

In each instance where the Board must take corrective action due to the failure of the Contractor to perform in accordance with the contract, the Board will assess two hundred fifty dollars (\$250) payable by the Contractor 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 Board suspends or revokes approval for the Contractor to use an employee, agent or subcontractor in the performance of this Contract due to unsatisfactory performance and/or conduct.

The Board shall deduct the amount of liquidated damages from moneys due or to become due under this Contract 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.

4.6 DEFAULT OF CONTRACT

The Board has the right to declare the Contractor in default of the whole or any part of the Contract and/or for each or all Proceed Orders where the Contractor:

violates any of the terms or conditions of this Contract;

fails to provide the Work, or any part thereof, in accordance with the requirements of this Contract, or fails to complete each Proceed Order within the time stated therein;

transfers or assigns of this Contract without the written consent of the Board;

executes this Contract in bad faith;

submits false or misleading documents to the Board in order to induce the award of this Contract;

accepts Proceed Orders from schools, offices, units, bureaus, and divisions etc., of the Board for items which are not stipulated in this Contract or any other current written Agreement with the Board;

distributes sales or marketing literature to schools, offices, units, bureaus, divisions, etc., of the Board without the written consent of the Executive Director;

submits any invoice for payment for any Work not completed;

delivers material or equipment 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 Contract;

if the Contractor fails to commence the Work for a Proceed Order when notified to do so or refuses to proceed with the Work as directed by the Director/DSF;

Certification by the Director/DSF that

- A. The Contractor is or has been willfully or in bad faith violating any provision of this Contract or any Proceed Order;
- B. The Work is not or cannot be substantially completed within the time provided in the Proceed Order, provided, the Director/DSF considers the possibility of timely completion is attributable to conditions within the Contractor's control;
- C. The Contractor has not maintained Labor sufficient to complete the Work within the time provided in the Proceed Order and has failed to increase his force when ordered to do so by the Director/DSF.
- D. The Contractor is unnecessarily, unreasonably, or willfully delaying the performance and completion of the Work, the award of necessary subcontracts, or the placing of necessary material and equipment orders.

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

The Board will declare the Contractor in Default for any Proceed Order by sending the Contractor a written notice that the Contractor is declared in Default by the Executive Director of the Division of Contracts and Purchasing. The Board has the power to take immediate possession and use of all materials and equipment at the Site(s) and the Contractor shall not remove the same, unless directed to do so by the Executive Director.

4.7 COMPLETION OF WORK AFTER DEFAULT FINDING

The Board, after declaring the Contractor in Default, may direct the Contractor's Surety, if one exists, to complete the Proceed Order in accordance with the terms of the Performance Bond. If the Surety fails to complete the Proceed Order, or if no Surety is required, the Board may have the Work completed by contract with or without public letting, or otherwise, utilizing the plant, materials, equipment, tools, supplies, etc. remaining on the Site, as advisable.

4.8 CONTRACTOR LIABILITY AFTER DEFAULT FINDING

The expense of completing the Purchase Order as certified by the Executive Director, may be charged against and deducted out of monies due or to become due under this Contract; the balance of monies, if any, are to be paid to the Contractor without interest after such completion. The Contractor shall pay the Board the excess cost for completing the Work, certified by the Executive Director if the total cost of completing the Work exceeds the Proceed Order price. Any excess may also be deducted from monies due to the Contractor on any other Board contracts.

4.9 TERMINATION OF CONTRACT

The Board shall have the right to terminate this Contract for convenience at any time upon thirty (30) days written notice to the Contractor.

- A. The Contractor upon receipt of a termination notice, unless otherwise directed by the Executive Director shall:

- (1) Stop Work on the date specified in the notice;

- (2) Take action as necessary to protect and preserve of the Board's materials and equipment;
 - (3) Assign to the Board or deliver to the Site, or other location designated by the Executive Director, any non-cancelable orders for specially manufactured material and equipment;
 - (4) Take no action which will increase the amounts payable by the Board under this Contract.
- B. The Board will pay the Contractor:
 - (1) For all completed Proceed Orders the cost of the Proceed Order
 - (2) For all partially completed Proceed Orders, the Contract price for each completed task; for each incomplete task, the direct cost thereof. Direct costs as used shall mean:
 - a. The actual purchase price of Material and Equipment plus necessary and reasonable delivery costs;
 - b. Actual cost of Labor incurred in construction and installation at the Site;
 - c. Actual cost of necessary bonds and insurance purchased pursuant to this Contract less any amounts that have been or should be reimbursed to the Contractor
 - (3) Direct costs shall not include overhead.
- C. In no event shall any payments exceed the Proceed Order price or the Contract price for individual tasks.
- D. All payments pursuant to this paragraph shall be deemed liquidated damages and shall be accepted by the Contractor in full satisfaction of all claims against the Board arising out of the termination.
- E. On Contracts specifying a not-to-exceed price, the not-to-exceed price sets the upper limit on the value of all Proceed Orders and does not guarantee a value of Proceed Orders that will be issued to the Contractor. Each Proceed Order is treated as separate and distinct, the total value of which will not be greater than the not-to-exceed price.
- F. The Board may deduct or set off against any sums due and payable pursuant to this Contract and/or any other contract with the Board; any claims it may have against the Contractor.
- G. All payments made pursuant to this Contract are subject to audit and approval by the Comptroller, pursuant to the provisions of all New York State and City laws, rules, and regulations.

SECTION 5
COMPLIANCE WITH LAWS

5.1 COMPLIANCE WITH LAWS

In connection with the performance of this Contract, 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 Contract shall be deemed amended so as to comply strictly with the law.

5.2 CODE OF ETHICS

In accordance with policy adopted by the Board, any Contract, agreement or Proceed Order issued as a result of this Request for Bid 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 relating to conflicts of interest. In the event that the Contractor is, employs, retains, or engages the services of any employee of the Board 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 Contract nor shall the Contractor have any claim in law and/or equity against the Board or any Board agent, servant or employee.

5.3 NO DISCRIMINATION

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

- A. 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;
- B. 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;
- C. 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;
- D. That this Contract may be canceled or terminated by the City and all moneys due or to become due there under may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract and;
- E. 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 services shall be limited to operations performed within the territorial limits of the State of New York.

5.4 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.

5.5 PATENT RIGHT: COPYRIGHT

The Contractor shall be responsible for paying and resolving 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 services 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 services or equipment.

5.6 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.

5.7 INVESTIGATIONS

- A. The Bidders as well as the parties to this Contract 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.

B. OBLIGATION TO TESTIFY

- (1). 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;
- (2) **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 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 (3) below without the City incurring any penalty or damages for delay or otherwise.
 - c. The penalties which may be attached after a final determination by the commissioner or agency head may include but shall not exceed:
 - (1). 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
 - (2). 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 Contract, 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.
- (3). 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 c. 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 (3) 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.

C. **MEANINGS OF TERMS USED**

- (1). 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,
- (2).. 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.
- (3). 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.
- (4). 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.

- D. In addition to and notwithstanding any other provision of this Contract the commissioner or agency head may in his or her sole discretion terminate this Contract 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 Contract by the Contractor, or affecting the performance of this Contract.

5.8 INSPECTION AND INVESTIGATION

The Board, the Comptroller, the Special Commissioner of Investigation, or the Commissioner of Investigation of The City, have a right at all times to visit and inspect the Site and Work during the performance of this Contract.

5.9 LICENSE, PERMITS, ETC.

- A. Each Contractor shall obtain all licenses, permits, etc., required from all public agencies with jurisdiction over the Work and shall keep these documents properly posted at premises at all times during the performance of the Work.
- B. All Work performed by the Contractor shall comply with all applicable codes, rules and regulations of all City, State and Federal agencies.

5.10 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 Executive 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 Executive Director, the Executive Director 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 the Executive Director's opinion, the proposed delivery be of lesser value, the Executive Director may agree on condition that the price be revised to the extent of the difference in value.

5.13 FORCE MAJEURE

Except for the obligations of payment set forth herein, neither the contractor nor the Board of Education shall be liable for non-performance caused by circumstances beyond its control including, but not limited to, work stoppages (excluding work stoppages of the contractor's own or subcontracted staff/employees) , fire, civil disobedience, riots, rebellions, acts of God and similar occurrences.

In the event of non-performance caused by such circumstances the contractor will be permitted to terminate their contract Depending on the circumstance of such termination, the effective date will be at the determination of the Director of Division of Contracts and Purchasing whose decision will be binding.

Where unforeseen and uncontrollable cost increases for materials are in excess of the rate of increase in the CPI, the contractor may submit documentation of these increases to the Executive Director DCP who may allow the contractor to withdraw. The contractor shall complete all open proceed orders issued prior to any withdrawal. Alternately, the Executive Director may issue a change notice adjusting the rate of the CPI increase.

Where the labor category under which the work is to be performed is changed by a decision of the Comptroller, the contractor may submit documentation of the adverse impact of such change and request cancellation of the contract subject to the review and approval of the Executive Director DCP.

SECTION 6**ENVIRONMENTAL AND WORK/LABOR LAW RELATED REGULATIONS AND REQUIREMENTS****6.1 DUST CONTROL**

- A. The Bidder's attention is directed to the Dust Control Procedures established by the Division of School Facilities. The Dust Control Procedures shall be adhered to for all Work that may result in the creation of dust, and include specific information on materials that are known or assumed to contain, or suspected of containing asbestos or lead-based paint. Disturbance of existing building materials containing asbestos or lead based paint without following proper abatement procedures in accordance with Federal, State and City laws, rules, and regulations may pose health hazards and is strictly prohibited.

- B. Adherence to the requirements of the Department of Education Division of School Facilities Standard Operating Procedures Version 1, June 4, 2001 including the Building Material Data Form is mandatory. The Contractor shall fully comply with these procedures. Copies of these procedures are annexed to this specification are available on the Web at:

<http://www.opt-osfns.org/dsf/forms/StandardOperatingProcedures.pdf>

Building material data form is available on the Web at:

<http://www.opt-osfns.org/dsf/forms/BuildingMaterial.pdf>

Work Notification Form is available on the Web at:

<http://www.opt-osfns.org/dsf/forms/WorkNotificationLetter.pdf>

6.2 SAFETY AND HEALTH REGULATIONS

- A. The Contractor shall comply with all applicable requirements of the Department of Labor, Bureau of Standards, Safety and Health Regulations for Construction, such as those outlined in the 29 CFR 1518, Federal Register, Vol. 36, No. 75, April 17, 1971,- (29CFR Part 1926), OSHA, 29 CFR 1910-General Industry Safety and Health Standards and OSHA, 29 CFR 1910.134 Respiratory Protection including any updates and most up to date revisions. The Contractor shall comply with all Federal, State and Local laws, rules, and regulations created to protect Contractors' personnel including but not limited to regular full and part-time employees, short-term and contract workers, and any others engaged by the Contractor for the Work including occupants of the building. The Contractor shall pay special attention to asbestos and hazardous material awareness and 'Right to Know' training, respiratory protection, lockout tag out, ladder and scaffolding safety precautions.

B. APPLICABLE STANDARDS

The Contractor shall comply with all applicable standards including, but not limited to the following standards promulgated by the agencies and organizations listed below.

(1). U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

- 1910- General Industry Safety and Health Standards
- 1910.1001 General Industry Safety and Health Standards for Asbestos
- 1910.302-.307, 1926.400 Electrical
- 1910.28, .29, .67, 1910.22, .23, .66, 1926.451 Scaffolding
- 1910.22, .100h, 1926.25 Housekeeping
- 1910.1200 Hazard Communication (Employee Right to Know)
- 1910.25, .26, 1926.450 Ladders
- 1910.37, .38 Egress and Emergency Plans
- 1910.95, .132-.137, .1001, 1926.28, .100-.104 Personal Protective Equipment
- 1910.134 Respiratory Protection
- 1910.141, 1926.27, .51, .950h Sanitation
- 1910.242-.244, 1926.302 Powered Hand Tools
- 1910.20 Access to Employee Exposure and Medical Records

- 1910.141 Sanitation
- 1910.145 mishap Prevention Signs and Tags
- 1926.1101-THE CONSTRUCTION STANDARDS.
- 1926.1101 Asbestos
 - 1926.20b Accident Prevention
 - 1926.16 Contractor's Responsibilities

(2).. U.S. Department of Transportation (DOT) DOT 49 CFR:

- Part 171 Hazardous Substances,
- Part 172 Hazardous Materials Tables and Subparts B and C, Hazardous Materials Communication Regulations,
- Part 173, Shippers General Requirements Subpart M for Shipments and Packaging.

(3). American National Standards Institute (ANSI)

- ANSI Z9.2-79 1979 Fundamentals Governing the Design and Operation of Local Exhaust Systems
- ANSI Z86.11973 Commodity Specification for Air
- ANSI Z87.1 Practices for Occupational and Educational Eye and Face Protection
- ANSI Z88.21980 Respiratory Protection
- ANSI Z89.1 Safety Requirements for Industrial Head Protection.

(4). American Society for Testing and Materials (ASTM)

- ASTM D 1331-89(2001) Surface and Interfacial Tension of Solutions of Surface-Active Agents
- ASTM E 84-04 Surface Burning Characteristics of Building Materials
- ASTM C 195-00 Specification for Mineral Fiber, Thermal Insulated Cement
- ASTM C 553-04 Specification for Mineral Fiber, Blanket and Thermal Insulated (Industrial Type)
- ASTM E 736-00 Cohesion/Adhesion of Sprayed Fire-Resistive Materials Applied to Structural Members
- ASTM E1368 Standard Practice for visual inspection of Asbestos abatement
- ASTM E2356 Standard Practice for Comprehensive Building Asbestos Surveys.

(5). Underwriters Laboratories Inc. (UL)

- UL 467 Grounding and Bonding Equipment
- UL 5861990 High-Efficiency Particulate, Air Filter Units
- UL 723 Flammability of Cellular Plastics and other Building Materials used for Interior Finish

(6).. Compressed Gas Association (CGA)

- Pamphlet G-7 Compressed Air for Human Respiration

(7). National Fire Protection Association (NFPA)

- NFPA 255 Standard Method of Test of Surface Burning Characteristics of Building Materials
- 70-1993 National Electrical Code (NEC)

(8). U.S. Department of Environmental Protection

- Polychlorinated Biphenyls (PCBs): 40 CFR Part 761, regarding handling, transportation and disposal of PCBs

(8). MSHA / NIOSH Respiratory Protection Standards program.**6.3 ASBESTOS AND ENVIRONMENTAL CONDITIONS**

Disturbance of existing building materials containing asbestos or lead based paint without following proper abatement procedures in accordance with Federal, State and City laws, rules and regulations may pose health hazards and is strictly prohibited. The Contractor is responsible to avoid improper removals or disturbance of asbestos or lead based paint. The Contractor is responsible for all costs and fees associated with compliance without reimbursement by the Board.

A. This Contract does not require asbestos abatement by the Contractor, nor does it allow it. The Contractor and all its workers must become knowledgeable about all safe work practices and applicable laws, rules and regulations for repair and maintenance work in areas that may contain asbestos and shall observe such laws, practices, rules and regulations in the course of the Work. The Contractor is responsible for consulting all records which may be available in the school and/ or at DSF and making sure that the Site of the proposed work is asbestos free, and that no contamination will be caused by the accidental release of asbestos.

B. City, State and Federal Asbestos Regulations

The below listed City, State, and Federal laws and regulations may affect the work of the Contract and the Contractor is required to comply with these laws, rules, and regulations.

(1) New York City:

24 NYC Administrative Code 146.1, et. seq. (DEP), 16 NYC Administrative Code 117.1 (DOS), and all applicable regulations including 15 NYCRR Chapter 1 (Asbestos Control Program)

Questions regarding the asbestos regulations should be directed to:

New York City Department of Environmental Protection
Asbestos Control Program
59-17 Junction Boulevard, 8th Floor
Flushing, N.Y. 11373
718-595-3693/3682

www.nyc.gov/html/dep/html/asbestos.html <<http://www.nyc.gov/html/dep/html/asbestos.html>>

(2) New York State:

New York State Industrial Code, Rule 56 "Asbestos" (12 NYCRR-56)", and all other applicable NYS laws, codes, variances and regulations

Questions regarding the asbestos regulations should be directed to:

New York State Department of Labor
Division of Safety and Health
License and Certificate Unit
Building 12, Room 161
Albany, N.Y. 12240
518-457-2735

<http://www.labor.state.ny.us/workerprotection/safetyhealth/sh56.shtm>

(3) United States:

US EPA Asbestos-Containing Materials in Schools: Final Rule and Notice, 40 CFR Part 763, Subpart E; and US EPA National Emission Standard for Hazardous Air Pollutants (NESHAP), Asbestos 40 CFR 61 Subparts A and M

Address:
Environmental Protection Agency
290 Broadway
New York, N.Y. 10007-1866

www.epa.gov/asbestos/2003pt763.pdf

www.epa.gov/asbestos/2003pt61.pdf

Copies of the asbestos regulations may be obtained from the above web addresses.

- C. Prior to performing any Work, the Contractor shall check the Site to ascertain the areas within the building that may have asbestos-containing materials, by referring to the Asbestos Hazard Emergency Reporting Act (AHERA) Management Plans which requires an inspection and plan for work in all spaces used for educational and related activities and other available records if necessary.
- D. The Contractor shall post and update the "Building Material Data Form" (BMDF) during Work on Site. If there is a change to what is worked on at the Site, the BMDF must be updated and an affirmative verification of the materials made. One copy of the BMDF is to be left with the school custodian and one copy is to be submitted with the CAP.
- E. It should be assumed that all pipe, boiler, and duct insulation contains asbestos, unless identified as non-asbestos containing materials. It should also be assumed that any substrate to the finishes (including flooring) contains asbestos unless identified / tested as non-asbestos containing materials. The Work will not start until the Site, work areas, and equipment are identified and cleared as not containing asbestos.
- F. If during the course of the work the Contractor observes the presence of previously untested material which may contain asbestos that the ongoing Work will disturb or is otherwise separable, the Contractor will immediately cease the Work, safe off the area, provide all protection necessary to prevent contamination of the surrounding areas, and immediately notify the Custodian, Contract Manager, and the Division of School Facilities Office of Building Services at (718) 361-3808.
- G.. Should the Work be in areas with asbestos-containing materials, the Contractor must strictly adhere to all related laws, procedures, rules and regulations.
- H.. The Contractor shall comply with all laws, regulations, rules, procedures, requirements and standards and require responsibility for compliance of its Labor and professionals who are completing the Work. The Contractor shall directly receive and be responsible for payments and resolutions of all citations, assessments, fines or penalties which are incurred by its Labor and professionals in failing to comply. Where conflict among the laws, rule, regulations, procedures, standards or within these specifications exist, the more stringent requirements shall apply.
- I.. The Contractor shall not receive extra payment for asbestos awareness and precaution costs. The Board is not responsible for any costs due to any of the above precautions taken.
- J. The Contractor shall indemnify the Board and the City and save them harmless from any and all losses, costs and expenses incurred, including fines and judgments, by reason of negligence on the part of the Contractor that results in exposing its employees, Board employees, students, other staff or visitors in or around the Site to asbestos, or by reason of failure to follow proper or accepted procedures addressing asbestos awareness and precautions, or by reason of violations or alleged violations of any applicable Federal, State or City laws, ordinances, rules, regulations or directives.

B . ULTRA LOW SULFUR LAW

The Contractor shall comply with all provisions (including most current riders and amendments) of NYC Local Law 77 of 2003, Ultra Low Sulfur Diesel Fuel, Rider for Public Works Contracts and the NYS Law, Ultra Low Sulfur Diesel Fuel Coordinated Construction Act for Lower Manhattan, Rider for Public Works Contracts.

6.4 NEW YORK STATE LABOR LAWS

The Contractor must comply with all provisions of the New York State Labor Law, including amendments thereto, and the provisions of Section 6-109 of the New York City Administrative Code, as amended.

If the Work of this Contract is covered by the provisions of the New York State Labor Laws Article 8: Public Work or Article 9 Prevailing Wage for Building Service Employees, the following provision(s) shall apply:

A. New York State Labor Law Article 8: Public Works §220

No laborer, worker, or mechanic employed by the Contractor, subcontractor or other person performing the whole or part of the Work in this Contract is permitted or required to work more than eight (8) hours in any one (1) calendar day, or more than five (5) days in any one (1) week, limited to cases of extraordinary emergency including fire, flood or danger to life or property, national emergency when proclaimed by the President of the United States of America, or in any other case provided by law.

Where there are not sufficient laborers, workers and mechanics who are employed to complete the Work in this Contract as a result of the restrictions on the number of hours and days of labor, and the immediate commencement or completion without undue delay of the Work is necessary for the preservation of the Site and/or for the protection of the life and limb of the persons using the same, these laborers, workers and mechanics are permitted or required to work more than eight (8) hours in any one (1) calendar day; or five (5) days in any one (1) week; provided, upon application of any Contractor the Director, shall first certify and request to the Industrial Commissioner of the State of New York ("Industrial Commissioner") that the Work is of an important nature and a delay in carrying it to completion would result in serious disadvantages to the public; and provided, further, that such Industrial Commissioner shall have determined that such an emergency does in fact exist. Failure of the Director to make the certificate to the Industrial Commissioner shall not entitle the Contractor to damages for delay or for any other cause.

No part of the Work or Labor is performed by the Contractor in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the Contract. Compliance with the safety, sanitary and factory inspection laws of New York State where the Work is performed is prima facie evidence of compliance.

B. New York State Labor Law Article 9: Prevailing Wage for Building Service Employees

(1) The Contractor shall pay the wage for a legal day's work and supplements provided to building service employees, as defined in New York State Labor Law § 230 of the New York State Labor Law, employed upon the whole or part of the Work in this Contract, is not less than the prevailing rate of wages and any supplements required for payment to the various classes of employees on the performance of the Work, ascertained and determined by the Comptroller as set forth in a schedule. Said schedule is attached and incorporated into to this Contract

(2). No later than the first (1st) day the Work on this Contract or any Proceed Order will begin, the Contractor shall post in a prominent and accessible place on the Site a legible statement of the wages for payment to the employees for the Work. This statement is in the language(s) spoken on the Site (§231(6)).

- (3). An apprentice in a craft or trade is permitted to work at a wage lower than those established for the journeyman in the craft or trade only if all of the following conditions are met:
 - a. The apprentice is individually registered in an apprenticeship program which is duly registered with the Industrial Commissioner in conformity with New York State Labor Law Article 23: Apprentice Training.,
 - b. The apprentice's registration occurred prior to their employment as an apprentice on the craft or trade service work provided to the Contractor; and
 - c. Written proof the apprentice's registration is submitted to the Board prior to the apprentice's employment as an apprentice. The proof submitted shall include evidence of the appropriate ratios and apprentice's wage rates. In no event shall the ratio of apprentice to journeyman employed on the Work be greater than the lesser of the following rate: The ratio permitted in the apprenticeship program approved by the Industrial Commissioner, or the ratio prevailing in the locality where the Work is performed.
- C. New York State Labor Law §232: Overtime All Labor, who work more than eight (8) hours in any one (1) day or more than forty (40) hours in any work week, are paid wages for overtime by the Contractor, at a rate not less than one-and-one-half times (1 ½) their prevailing basic hourly rate. New York State Labor Law §232: Overtime
- D. New York State Labor Law §233: Record Keeping
 - (1). The Contractor shall keep the original payrolls or transcripts subscribed and confirmed as true, under penalties of perjury, showing the hours and days worked each employee, the craft, trade or occupation at which they was employed, and the wages paid.
 - (2). If wages paid include sums which are not paid directly to the employee weekly and are expended for supplements, the records shall include the hourly payment on behalf of that employee, the supplement for the payment made, the name and address of the person to whom the payment has been made. The Contractor shall keep an inscribed copy of the agreement under which these payments are made, a record of all net payments made, and a list of all persons payments are made.
 - (3). The records required are to be kept on the Site during all times that Work is performed. Upon a formal order of the Board or the City, the Contractor shall produce within five (5) days, to the Division of School Facilities, the records subscribed and affirmed by it as true and accurate, under penalties of perjury.
 - (4). All of the records required shall be kept and maintained by the Contractor for a period of three (3) years after completion of the Contract.
 - (5). Certification of Wage Amounts: Before any payment by the Board, the Contractor and its Subcontractors shall file a statement in writing and in form satisfactory to the Comptroller, certifying the amounts currently due for daily or weekly wages on account of the Labor performed under this Contract. This statement will include the names of persons whose wages are unpaid and the amount due to the Contractor or Subcontractor on behalf of each respectively. The Contractor will certify by oath that this statement of the Contractor or Subcontractor was read and the Contractor or Subcontractor knows the contents of the statement are true of his/her own knowledge. (New York State Labor Law §237)
 - (6). Prevailing Rate Payroll Report

Workers directly employed and supervised by the Contractor shall perform all Work. Workers are paid the prevailing rate wages under Section 220 or Section 230 for the corresponding class of labor, applicable for the type of work, in the locality where the Work is performed.

(7). Daily Sign In Sheets

The CONTRACTOR and SUBCONTRACTOR shall maintain daily site sign in sheets, which shall include blank spaces for the employee's name to be both printed and signed, job title, date started and employee's social security number.

6.5 **CERTIFIED PAYROLL**

When the Contractor applies for each payment, the Contractor shall submit to the Director/DSF or purchasing unit a written payroll certification, in a format approved by the Comptroller, indicating compliance with the prevailing wage, minimum wage and stipulations required by New York State Labor Law § 237 and The Contractor shall receive no payment until each certification is submitted and received by the Director/DSF. Electronic Submissions of the required Certified Payroll in a manner authorized by the Director/DSF shall be done when and as directed by the Director/DSF.

The Comptroller approved forms may be downloaded directly from the Comptroller's website at: http://www.comptroller.nyc.gov/bureaus/bl/2003_pdf_files/LABORLAW_PAYROLL_FORM_w_instruc.pdf

6.6 **OVERTIME WORK**

The Board reserves the right to order and to pay for overtime work when a delay occurs, provided such delay is not due to the fault of the Contractor.

Any post award violation of the provisions of this Article may, at the option of the Board, result in terminating and voiding the Contract, and the Contractor will be liable for the additional cost to the Board for completion of any open Proceed Orders. The Board has the right to assess damages against the Contractor for that amount over the Contract price which the Board is required to expend in connection with the termination, re-letting and completion of the Contract. The Board may regard any violation of this Article as sufficient ground to preclude the Contractor from qualifying or pre-qualifying as a responsible bidder on subsequent Board contracts.

The overtime work may be authorized by taking the following steps:

- A. The Contractor shall obtain "PW Form 30 (Application for Dispensation)" from the State of New York Department of Labor, Bureau of Public Work.
- B. After completing two (2) originals of the PW Form 30, the Contractor shall submit it to the Director of the Board for certification of that section of the PW Form 30 which states the described Work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public.
- C. The Contractor shall also submit the certified forms to the Industrial Commissioner for determination that such an emergency does in fact exist, as provided in New York State Labor Law §220(2).
- D. If the Industrial Commissioner approves, it will issue a Certificate of Emergency (PW Form 31 - Notice of Determination) to the Contractor with a copy to the Board.
- E. Upon receipt of this PW Form 31, the Contractor is authorized to proceed promptly. For each emergency, the Contract price is adjusted according to the Contract.

6.7 TORCH BURNING OPERATIONS

- A. The Contractor shall pay the costs of all permits, certificates, fire guards, barricades, etc., required in connection with torch burning at no additional cost to the Board.

All torch burning operations utilizing oxygen or other combustible gases are to be performed in strict accordance with Chapter 4 Fire Prevention Code, Subchapter 17, COMPRESSED GASES, and all other applicable, Fire Department Rules and Regulations including but not limited to the FDNY's Prevention Code for issuance of permits for storage and use of oxygen and combustible gases during temporary and emergency torch burning operations together with the following additional precautionary measures:

- (1). No oxygen combustible gas cylinders are to be stored on premises.
 - (2). Each oxygen or other combustible gas work area is separated from other areas of premises and a qualified fireguard will remain on duty to insure the separation. Separated, as used this section, shall mean a temporary barricade to prohibit entrance by unauthorized persons.
 - (3). After all oxygen and combustible gas operations are complete, a qualified fire guard will remain on duty for a total of one and one half (1.5) hours during which time it shall make three (3) complete inspections, at half hour intervals of the entire work area for the purpose of detecting fire.
 - (4). The use of liquefied petroleum gases in occupied places of assembly is strictly prohibited.
- B. Contractor must notify the appropriate Regional Office to proceed with any torch burning and obtain permission from the appropriate Borough Contract Manager before proceeding.
- C. Each contractor performing torch burning operations shall apply and obtain a Fire Department permit from the FDNY before commencing such work. Each torch burning operator shall carry at all times, a current FDNY "Certificate of Fitness" issued by Fire Department to perform this type of work.
- D. An FDNY fire guard who holds a valid "Certificate of Fitness" is stationed in work area and Site at all times during torch burning operations and thereafter as indicated above.

6.8 TROPICAL HARDWOOD

Tropical hardwoods as defined in Section 165 of the New York State Finance Law shall not be utilized in the performance of this Contract except as expressly permitted by the law.

6.9 PROTECTION OF ART

- A. All works of art, including but not limited to, paintings, murals, stained glass, statues, sculptures, monuments, fountains, arches, and other structures of a permanent character ("Art") intended for ornament or commemoration, and every design of the Art for use in performing this Contract, including the design of all buildings, bridges, approaches, gates, fences, lamps or structures for performance under this Contract, are approved by the Art Commission of the City and the Public Art for Public Schools unit at the School Construction Authority (PAPS) prior to the erection or placing in position. The Executive Director will submit all required data for the approval of the Art Commission and the PAPS. Final

payment is not due or payable under this Contract unless and until the Art Commission and the PAPS certifies the design for the Work is approved by the Art Commission, and that the same is executed in substantial accordance with the design approved, pursuant to Section 854 of the New York City Charter.

- B. The Contractor shall verify the existence of all objects of art, as catalogued in the Board of Education's Art Collection that the Work may affect. The Contractor shall preserve and protect all identified artwork as directed by the Public Art for Public Schools (PAPS). The Contractor is liable for the full cost of conservation by a conservator selected by PAPS, or replacement value of the artwork damaged by the Work. The Contractor is liable for the full cost to remove and replace any new installations or equipment that blocks or obscures the artwork as required by PAPS.

6.10 NOISE CONTROL

- A. The Contractor is hereby advised that the work of this Contract shall be performed in compliance with all applicable provisions of Local Law 57, New York City, Noise Control Code effective September 1, 1972.
- B. Without restricting the generality of the foregoing, the Contractor's attention is directed to the following specific provisions of this Code which is applicable to construction and related work in and around school buildings as follows:

Section 1403.3-3.01

No person shall make, continue or cause or permit to be made or continued any unnecessary noise.

Section 1403.3-4.01

Any act in violation of the provisions of this article of the code is deemed to be in violation of Article 111 of the code, without any way limiting the generality of the provisions of Article 111 of the code.

Section 1403.3-411 Construction Activities

Except as otherwise provided in this section, no person shall engage in or permit any person to be engaged in construction activities in any zone other than on weekdays between the hours of 7 A.M. and 6 P.M. Subject to provisions of Section 3.01 of the code, an agency of the City of New York authorized under the Administrative Code to issue permits or licenses authorizing construction activities may, in the case of urgent necessity in the interest of public safety, issue variance from the provisions of a sub-division of this section with respect in any such construction activity. Such variance may be granted for an initial period of up to three days and may be renewed for periods of three days or less while such urgent necessity continues. Such variance shall be clearly marked on such license or permit and shall be prominently posted at the site of such construction activities by the permittee or licensee. A copy of such marked license or permit shall be promptly forwarded to the Board. In the case of an emergency, construction activities directly connected with the abatement of such emergency may be undertaken without a variance as herein provided for a period of not to exceed twelve hours from the commencement of such construction during which time application for a variance hereunder shall be made.

Section 1403.3.4.13 Construction Devices

Except as provide in Article V of this code, no person shall operate or use or cause to be operated or used a construction device in such a way as to create a unnecessary noise.

Section 14.3.B-4.19 School, Hospitals, Courts

No person shall cause or permit the creation of any unnecessary noise through the use of any device on any street adjacent to any school or court while the same is in session, or adjacent to any hospital.

Section 14.03.3-5.21 Paving Breakers

To be operated only within the allowable sound levels indicated in the code.

- C. The Contractor is required to comply with all registration requirements issued under Section 1403.2.09 for air compressors and/or paving breakers used in the performance of the work of this Contract.
- D. It shall be the responsibility of each Contractor to obtain a copy of the aforementioned Noise Control Code and acquaint himself with the applicable provisions and comply therewith in the performance of all work of this Contract. Copies of this Code may be obtained at the City Record Sales Office 2213 Municipal Building, New York, N.Y. 10007.

6.11 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 Board 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 the Board's?

Yes _____ No _____

SECTION 7
GENERAL CONDITIONS AND INSURANCE

7.1 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 Contract 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.

7.2 WRITTEN AGREEMENT

The written Contract 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 Contract 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 site.

7.3 NON-ASSIGNMENT OF CONTRACT

The Contractor shall give its personal attention to the faithful performance of this Contract. The Contractor covenants that it will not assign, transfer, convey, sublet or otherwise dispose of this Contract or its right, title or interest therein or its power to execute such Contract, to any other person or corporation without the previous written consent of the Chancellor. Request for permission to assign a contract shall be in writing to the Director. The Chancellor' shall grant or deny such requests and the Chancellor'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 Contract, 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 Contract, 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 Contract, or any part therefore, or of any monies due or to become due hereunder, unless authorized as aforesaid. (Rev 11/02)

7.4 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 services or for any neglect of the Board or of any person pertaining to or affecting the work done or services 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.

7.5 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.

7.6 PROGRESS PAYMENTS

If a provision is made for progress payments in the Proceed Order, payments will be made in installments as the Work progresses. All progress payments are based upon an estimate and certificate made by the Director of the materials installed and the Work completed by the Contractor.

7.7 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 Contract, any other agreement with the Board, including any agreement for a term commencing prior to the term of this Contract, 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.

7.8 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 Executive Director, or other officer, inspector, agent or appointee of the Board, under any provision of this Contract from any time (either before or after the final completion and acceptance of the work or services and payment therefore, pursuant to any such return or certificate) showing the true and correct amount and character of the work done and services furnished by the Contractor, or any other person under this Contract, 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 services 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.

7.9 LIENS

The Contractor will not, at any time, suffer or permit any liens, attachments or other encumbrances, under the laws of the State of New York or otherwise, by any person(s) or entity(s) filed against the amount due or to become due under this Contract for the performance of the Work or Materials, or by reason of any other claim or demand against The Contractor. Any lien, attachment, or other encumbrance, until it is removed or legally bonded to the satisfaction of the Board, shall preclude any and all claim or demand for any payment under this Contract.

If within thirty (30) days after the completion of the Work and acceptance by the Board, any person(s) or entity(s) claiming that they performed any labor or furnished any material toward the performance and completion of this Contract but who has not received payment, shall file with the Board any notice described in the Lien Law or in any Act of the Legislature of the State of New York, the City and the Board shall retain the amount of the payment due. The portion of the payment retained shall total the sufficient amount to pay off, satisfy and discharge the amount in the notice alleged together with the reasonable costs of any action(s) that may be brought to enforce such claim or the lien created by the filing of such notice. The City and the Board will retain the payment until the lien created by the said act, and the filing of said notice is discharged pursuant to the provisions of law.

7.10 BOOKS AND RECORDS

A. MAINTENANCE

The Contractor shall maintain separate and accurate books, records, documents, other evidence as well as accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

B. RETENTION OF RECORDS

The Contractor agrees to retain all books, records and other documents relevant to this Contract for six (6) years following the final payment or termination of this Contract. New York City, New York State, Federal auditors and any other persons duly authorized by the Board have full access to and the right to examine any of these materials including additional materials requested during the six (6) year period.

C. NO REMOVAL OF RECORDS FROM PREMISES

Where performance of this Contract involves use by the Contractor of Board papers, files, data and/or records at Board facilities or offices, the Contractor shall not remove any such papers, files, data or records without prior written approval from the Records Officer for the Division of School Facilities. If any Board papers, files, data and/or records are used by the Contractor to perform the Work, the Contractor shall promptly return such Board papers, files, data and/or records upon completion of each Proceed Order and the Contract.

7.11 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.

"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 groups;
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 services, 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 services 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.

7.12 NO PERSONAL LIABILITY FOR BOARD OR CITY EMPLOYEES

The Board, Chancellor, any officer, employee, agent or representative of the Board or of the City is not personally liable to the Contractor or any party on behalf of Contractor based upon any theory of law or equity, under this Contract, or by reason of any individual's actions or failure to act in any way connected with this Contract, whether or not the action shall have been within or without an individual's scope of authority. The scope of this provision includes personal injury to any personal interest (commercial or otherwise), physical injury (including death), property damages, and any pecuniary damages where such injuries or damages result from or arise out of negligence. The Contractor further waives any and all rights to make a claim or commence an action or special proceeding, in law or equity, against any of the aforementioned individuals, and the Contractor hereby assigns its complete right, title, and interest in any such claim, action, or special proceeding to the Board.

7.13 CLAIMS

If the Contractor claims compensation for any damage sustained by reason of any act or omission of the Board, its agents or employees, the Contractor shall within ten (10) days deliver to the Executive Director a written statement of the nature of the damage sustained and a basis of the claim against the Board.

On or before forty-five (45) days after the alleged damage is sustained the Contractor shall deliver to the Executive Director a written itemized statement of the details and amount of the damage verified by the Contractor. Unless these statements are made and delivered within the times prescribed, all claims for compensation are deemed cancelled and invalidated and the Contractor is not entitled to payment on account of the claims.

The Contractor shall, upon notice from the Board, produce for examination by the Board, all books of account, bills, invoices, payrolls, subcontracts, time books daily reports, bank deposit books, bank statements, check books, cancelled checks, showing all transactions in connection with, relating to or arising by reason of this Contract. The Board may examine the Contractor, under oath to investigate claims made against the Board. If the statements are made and filed within the prescribed time, the records are submitted for examination and the examination under oath is completed as aforesaid, the Board shall be released from all claims arising from and relating to this Contract. No person has the power to waive any of the foregoing provisions, and that in any action against the City or the Board to recover any sum in excess of the sums certified by the Board to be due under or by reason of this Contract, the Contractor must allege in his complaint and prove, at the trial, full compliance with the provisions of this Contract.

After commencement of an action by the Contractor arising from this Contract, the Board has the right upon written notice, to require the Contractor to produce for examination under oath the above described books and documents of the Contractor and to submit himself and persons in his employ for examination by the attorney. If the Contractor does not follow the prescribed instructions in this Article, the Contractor's action will be dismissed.

7.14 NO CLAIM AGAINST BOARD OR CITY EMPLOYEES

The Contractor shall not make any claim against any officer, agent, or employee of the Board or the City for, on account of, anything done or not completed in connection with this Contract.

7.15 CLAIMS MUST BE MADE WITHIN ONE YEAR

The Contractor must maintain an action based on a claim based on this Contract against the Board or the City within one (1) year after the date of acceptance of the Work by the Board. If the Contract requires any part of the monies earned to be retained for any periods after acceptance of the Work, actions to recover the retained moneys may be commenced within six (6) months from

the date when the retained moneys are payable under the terms of the Contract. If this Contract is terminated or declared in Default by the Board, the action by the Contractor or anyone claiming under the Contract must be commenced within six (6) months from the date of the termination or declaration of abandonment by the Board. The Contractor or anyone claiming under the Contractor, is entitled to any additional time to begin anew for any other action if the action is commenced within the times prescribed is dismissed or discontinued, notwithstanding any provision of the New York Civil Practice Laws and Rules to the contrary.

7.16 HOLD HARMLESS PROVISIONS WITH RESPECT TO OTHER CONTRACTORS

If any Other Contractor who has a contract with the Board for the performance of work upon the Site(s) sustains any damage through any act or omission of the Contractor or through any act or omission of any subcontractor of the Contractor, the Contractor agrees to reimburse the Other Contractor for all damages and to defend at his own expense any suit based on such claims. If any judgment or claims against the Board are allowed, the Contractor shall pay or satisfy such judgment or claim, pay all costs and expenses associated with the judgment or claims, and indemnify and hold the Board harmless from all such claims.

7.17 NO WAIVER DUE TO LIQUIDATED DAMAGES ASSESSMENT

The Board's right to indemnification is not diminished, waived or discharged, by its recourse to assessment of liquidated damages or by the exercise of any other remedy provided for by contract or law.

7.18 INSURANCE REQUIREMENTS

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 while the services, equipment, goods, products, etc. called for herein are being delivered or while the services/work outlined herein is being performed.

The Bidder shall submit with their bid, 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 Deputy Director Procurement Unit, 44-36 Vernon Boulevard 3rd Floor, LIC, NY 11101.
- 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.

7.19 INSURANCE POLICIES REQUIRED

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

A. Comprehensive General Liability Insurance (including product(s) Liability Insurance)

The Contractor shall provide Commercial General Liability Insurance Policy in the Contractor's name and naming the Board and the City as Additional Insured endorsed to cover the liability assumed by the Contractor under the indemnity provisions of this Contract. This insurance policy is maintained throughout the term of this Contract and shall protect the City, the Contractor and/or its subcontractors performing the Work at the Site from claims for property damage and/or bodily injury, including accidental death, which may arise from operations under this Contract. The coverage is at least as broad as that provided by Insurance Services Office ("ISO") Commercial General Liability Form CG0001 ed. 1/96. The coverage provided is "occurrence" based rather than "claims-made."

The Commercial General Liability Insurance Policy provided shall include without limitation, the following coverage: Premises Operations, Products or Completed Operations, Contractual Liability, Broad Form Property Damage, Medical Payments, Independent Contractors, Personal Injury (Contractual Exclusion deleted), Explosion, Collapse and Underground Property, and Incidental Malpractice. The Commercial General Liability Insurance Policy provided shall contain each of the following endorsements:

- (1) The Board, together with its officials and employees, is an Additional Insured under this policy, with coverage at least as broad as ISO Form CG 2026 (11/85 ed.); 1 and
- (2) Notice under the Policy to the Board shall be addressed to the Deputy Director Procurement Unit, Division of School Facilities, 3rd Floor, 44-36 Vernon Boulevard, Long Island City, NY 11101.
- (3) Notwithstanding any provision of this policy to the contrary, notice by or on behalf of the Board or the City as Additional Insured of any occurrence, offense, or claim, if such notice is required, it is deemed timely if given to the Insurance Company as soon as practicable after a Notice of Claim adequately specifying the occurrence, offense, or claim as one potentially covered under the policy is filed with the Board; however, in no event is "as soon as practicable" a period of less than one hundred and eighty (180) days thereafter; and
- (4) Any notice, demand or other writing by or on behalf of the Contractor to the Insurance Company relating to any occurrence, offense, claim or suit is deemed notice, demand,

or other writing to the Board and/or the City as Additional Insured, and any response thereto on behalf of the Insurance Company is sent to the Contractor, to the Board of Education Law Department at 52 Chambers Street, New York, NY 10007 and to the City at New York City Law Department, Insurance Law Unit, Affirmative Litigation Division, 100 Church Street, New York, NY 10007;; and

- (5) **Notice of Cancellation of Policy:** In addition to any other requirements concerning notice of cancellation, this policy shall not be canceled, terminated, modified or changed by the Insurance Company unless thirty (30) days prior written notice is sent to the Named Insured by Registered Mail and also sent by Registered Mail to the Deputy Director Procurement Unit 3rd Floor, 44-36 Vernon Boulevard, Long Island City, NY 11101 nor shall this policy be canceled, terminated, modified or changed by the Named Insured without the prior written consent of the **Chancellor** and
- (6) Notwithstanding any other provision or endorsement to the contrary, Section V (8) (f) of ISO Form CG0001, ed. 1/96 (or its equivalent), is hereby made a part of this policy; and
- (7) Notwithstanding any other provision or endorsement to the contrary, any provision or endorsement to this policy (other than one required by New York law) which operates in any way to reduce coverage hereunder below that provided under CG0001, ed. 1/96, does not apply to the City, as an Additional Insured, regardless of any reduction of coverage effected thereby upon any other Insured; and
- (8) It is agreed that the Insurance Company, in the event of any payment under these policies, will waive its rights of recovery, if any, against the Board and the City; and
- (9) Notwithstanding any other provision or endorsement to the contrary, the Board and the City as Additional Insured is covered for any "bodily injury" or "property damage" which results from the intentional acts of the Contractor or any other Insured under this policy other than the Board or the City.

B. 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.

C. 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 the Workmen's Compensation Law. The Contractor shall not begin work at, about, or upon, the property of the Board 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. Contractor shall only engage subcontractors when Contract permits who comply with the workman's compensation.

D. All Risk Builders Risk Insurance

Where specifically directed and required on proceed orders for work which will have progress payments, Builders Risk Policy shall be provided in the amount of the proceed order.

E. Subcontractors' 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 the Subcontractor(s) maintains the same types of insurance coverage in accordance with the requirements and amounts indicated herein.

7.20 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, services, etc. are being delivered or the service-work is being performed under this Contract, whichever instance is applicable.

7.21 CERTIFICATE OF INSURANCE (SAMPLE)

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:	
INSURED	COMPANY LETTER A COMPANY LETTER B COMPANY LETTER C COMPANY LETTER D	

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	POLICY TYPE OF INSURANCE	POLICY POLICY NUMBER	EFF. DATE	EXP. DATE	LIMITS
A	GENERAL LIABILITY () COMMERCIAL GENERAL LIABILITY () CLAIMS MADE () OCCUR, () OWNER'S & CONTRACTOR'S PROT. () B.F. VENDORS ()	REQUIRED			GENERAL AGGREGATE \$ PRODUCTS-COMP/OP AGG, \$ PERSONAL & ADV, INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (ANY ONE FIRE) \$ MED. EXPENSE (ANY ONE PERS) \$
	() AUTOMOBILE LIABILITY				
	() ANY AUTO () SCHEDULED AUTOS () ALL OWNED AUTOS () HIRED AUTOS () NON-OWNED AUTOS () GARAGE LIABILITY	REQUIRED			COMBINED SINGLE LIMIT \$ BODILY INJURY (PER PERSON) \$ BODILY INJURY (PER ACC) \$ PROPERTY DAMAGE \$
	EXCESS LIABILITY () UMBRELLA FORM () OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ 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 ISSUING COMPANY WILL. ENDEAVOR TO MAIL 30 DAYS BROOKLYN, NY 11201	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE 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:

SECTION 8 FORMS
REPRESENTATIONS OF FACT

- 8.1 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 the Bidder omits the imprint of its Corporate Seal as required and/or does not execute the applicable Affidavit of Acknowledgment as required and/or does not provide the 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 the time allowed will result in rejection of bid and the Bidder will not be considered for Award.

8.2 AFFIDAVIT OF ACKNOWLEDGMENT

The bid shall be verified by the oath in writing (and that document shall be Notarized) by an authorized representative of the Bidder's firm, 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.

On all out-of-state notarizations, the Comptroller of the City of New York requires a county clerks Certification of Notary from the county in which the Notary is registered.

8.3 REMINDER TO ALL BIDDERS

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

A. Verify that the following forms are completed:

- (1) Section 8.4 - "COMPANY INFORMATION"**
- (2) Section 8.5 - "NO BID RESPONSE FORM", if applicable**
- (3) Section 8.7 - "EQUAL EMPLOYMENT OPPORTUNITIES FORM"**
- (4) Section 7.21 - "CERTIFICATE OF INSURANCE (SAMPLE)"**
- (5) Section 8.8 - " VENDEX QUESTIONNAIRES"**

B. PLEASE COMPLETE THE DOCUMENTS FOUND IN SECTIONS.

- (1) BIDDERS INFORMATION, CERTIFICATIONS AND SIGNATURES WITH CORPORATE SEAL.**
- (2) AFFIDAVIT OF ACKNOWLEDGMENT, notarized. If the document is notarized by a party which is registered outside the State of New York, a certification from the count clerk from the county in which the notary is registered is required by the Comptroller of New York City.**

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

8.4 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.

8.5 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 services, 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 their future intentions, the preparation and mailing of the Bid Request Package represents an unnecessary expense to the Board. 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: _____

8.6 EQUAL OPPORTUNITY**A.. Policy**

It is the policy of the Board in accordance with the Labor Law of the State of New York and other applicable laws to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color or national origin or sexual orientation or affectational preference and to promote the full realization of equal employment opportunity through an affirmative, continuing program of compliance by all contractors doing business with the Board and their subcontractors.

B. 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.

C. Requirements Before Award of Contract

Prior to the award of contract, if required, 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 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.

D. Requirement After Award of Contract

In addition to a written Program of Affirmative Action ("PAA") the Contractor shall:

- (1). File and require its subcontractors to file equal opportunity Compliance Workforce Reports monthly with the Board's Office of Equal Opportunity ("OEO")The OEO may require weekly or bi-weekly reports from any one specific contractor or subcontractor it requires. The "Compliance Workforce Reports" shall indicate the following:
 - a. The percentage of the Work completed on the Contractor's Site.
 - b. The Subcontractors of every tier working on the Contractor's Site.
 - c. The total number of Workers and the total number of minority Workers during the specified period in each building and construction trade, including separate statistics for journeymen, apprentices and trainees.
 - d. Explanations for any current or anticipated departures from the total manpower utilization or minority manpower utilization projected in the Contractor's PAA.

- e. Any and all efforts made to recruit individuals from minority groups.
 - f. All other policies or practices of the Contractor affecting compliance.
- (2). Cooperate with civil rights groups and responsible community organizations concerned with the need for representative numbers of minority group workers in the building and construction trade industry.
 - (3). Hire minority group Workers from other sources if the union with which it has a collective bargaining agreement is unable or unwilling to supply them.
 - (4). Secure from any subcontractor(s), vendor(s) or supplier(s) a PAA and other general requirements as required of the Contractor. No Subcontractor shall be given a Proceed Order until his PAA is received and approved by the OEO.
 - (5). The Contractor shall comply with the policy of the Board as set forth by above and agrees and stipulates to abide by this PAA as set forth In this Contract.
 - (6). The Contractor agrees the Board has the sole right to determine whether he has engaged in discriminatory labor practices. Discriminatory labor practices are defined to exist when the Contractor, subcontractor, or any person(s) or entity employed by the Contractor or subcontract, because of the age, race, creed, color, national origin or sex or sexual orientation or affectational preference of any individual, refuses to hire, employ or to bar or discharge from employment the individual or discriminate against the individual in compensation or in terms, conditions, or privileges of employment.
 - (7). The Contractor shall post in conspicuous places available to employees and applicants for employment, notices provided by the Board providing the policy of the Board, the definition of discriminatory labor practices and "Notice of Nondiscrimination in Employment" attached and incorporated into this Contract.
 - (8). The Contractor agrees all placements, by itself or on its behalf, of solicitations or advertisement for employees will state that all qualified applicants are considered for employment without regard to race, creed, color, or national origin.
 - (9). The Contractor agrees to send to each labor union or other representative of the Labor who he has a collective bargaining agreement or other contract with, a notice with a copy to the Department of Contracts and Purchasing , advising the labor union or Workers' representative of the Contractor's commitments under this Contract.
 - (10). The Contractor agrees to furnish the Board all information and reports requested and permit access to his books, records, and accounts, for the purpose of investigation to ascertain compliance with the terms of this Contract pertaining to equal employment contract compliance and questions of discriminatory labor practices.
 - (11). The Board may terminate in whole or in part this Contract if the Contractor does not comply with the nondiscrimination labor practice provisions of this Contract , as solely determined by the Board. The Board may impose any sanctions and remedies as it determines necessary for non-compliance with the OEO. The Board may declare the Contractor ineligible for further Board contracts.
 - (12). The Contractor shall submit to the Board monthly reports indicating the breakdown of all of his employees by racial and ethnic classification.

- (13). The Contractor shall include in every subcontract or Purchase Order to bind each subcontractor or vendor.
- (14). The Board may require the Contractor or Subcontractor to submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers, providing or supervising apprenticeship or other training, that the Contractor deals, with supporting information, to the effect the Contractor's practices and policies do not discriminate on the grounds of race, creed, color, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Contract or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract with the Contractor is in accordance with the purposes and provisions of this Contract. In the event the union or agency refuses to execute this statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement, and such additional factual material as the Board may require.

E. Powers And Duties of the Board

The Board shall administer the PAA through its Department of Contracts and Purchasing, with the following powers and duties:

- (1). Issue all orders, rules, regulations and procedures as it deems necessary or convenient to carry out and implement the policy
- (2). Examine the employment practices of the Contractor and any subcontractor to determine whether or not the Policy is violated.
- (3). Use its best efforts, directly and through other interested City, State and Federal agencies, all contractors, and all other available instrumentalities, to cause any labor union whose members are engaged in the performance of this Contract, or any agency referring Workers, providing for supervising apprenticeship or training, or during performance of the Work, to cooperate in the implementation of the PAA
- (4). As necessary, notify other contracting agencies, the City Commission on Human Rights, the New York State Commission for Human Rights, the Equal Opportunity Commission, the U.S. Secretary of Labor, the New York City Law Department, the U.S. Department of Justice, or other appropriate Federal, State, and City agencies whenever it has reason to believe that practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964, or other applicable provisions of Federal, State, or CITY laws.
- (5). Hold hearings, public or private, as necessary for compliance, enforcement or education purposes, or by rule, regulation, or order, designate or direct any officer or employee of the Board to do so.
- (6). By recommendation of Department of Contracts and Purchasing, may hold, or cause to be held, hearings, prior to imposing, ordering or recommending the imposition of sanctions as provided for in this Contract. No order withholding from any contractor further Board contracts shall be made without affording the contractor an opportunity for a hearing.
- (7). Periodically review the practices and procedures of the various bureaus and officers of the Board administering the Contract with respect to compliance by them with the Board's Policy as set forth and require them to file reports with

F. Sanctions and Remedies.

In accordance with the rules, regulations procedures or orders as the Board may issue or adopt hereunder, the Board may:

- (1). Recommend to the New York City Law Department in cases where there is or a threat of substantial or material violation of this Contract, appropriate proceedings are brought to enforce such the Contract, including enjoining organizations, individuals, or groups who prevent, directly or indirectly, or seek to prevent, directly or indirectly, compliance with this Contract.
- (2). Recommend to New York City Commission on Human Rights, the State Commission for Human Rights, the Equal Opportunity Commission, the U.S. Secretary of Labor, New York City Law Department, or the U.S. Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964, or other applicable provisions of Federal, State, or CITY laws.
- (3). Recommend that criminal proceedings are brought for furnishing of false information to the Board.
- (4). Whenever the Board cancels or terminates a contract or whenever the award of further Board contracts are withheld under the provisions of this Contract because of non-compliance with the Contract provisions relating to nondiscrimination, the Board shall promptly notify the Comptroller.
- (5). If a dispute arises between the Contractor and the Board whether the Contractors proposed PAA for providing equal employment opportunity submitted by the Contractor complies with all requirements, laws and regulations, the dispute will be referred to Division of Contracts and Purchasing of the Board for hearing and determination. The determination of the Division of Contracts and Purchasing is final and conclusive, subject only to judicial review.
- (6). It is agreed that if the Contractor does not comply with the equal Opportunity provisions herein stated, as sole determined by the Board, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible to bid for future Board contracts and may be subject to such other sanctions as may be imposed and remedies invoked by the Board at its discretion.
- (7). 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.
- (8). 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'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. Conformity to technical rules of evidence at a hearing shall not be required. The determination of such Board appeal shall be final and conclusive, subject only to judicial review.
- (9). 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.

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

G. Miscellaneous

The Board may delegate to any officer, bureau head, or employee any function or duty of the Board set forth under this with the exception of creating new laws, rules, or regulations.

- (1). The provisions are deemed supplementary to, and not a substitution for, the provisions of the New York State Labor Law relating to nondiscrimination, and other applicable Federal, State, or City laws, ordinances, rules or regulations.
- (2). For information concerning the Board's policy or questions pertaining to Equal Employment Opportunity, Contractors may consult with the OEO.
- (3). This Contract is subject to the New York City Charter, Chapter 36 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 City law, rules and regulations.

H. Pre-Award Conference

Prior to the award of the Contract to the low Bidder, and if requested by the Office of Equal Opportunity, the Bidder shall attend a pre-award conference held in the Office of Equal Opportunity of the Board for the purpose of acquainting him with the statutory and contractual requirements and what specific measures shall constitute an acceptable program of Affirmative Action.

I. Program of Affirmative Action

- (1). The low Bidder for the Contract, prior to the award thereof, shall submit to the Director of the Office of Equal Opportunity of the Board a policy letter known as a Program of Affirmative Action.
- (2). The term "Program of Affirmative Action" (hereinafter referred to as P.A.A.) means a written plan formulated by a contractor which includes an analysis of employment, at all levels and in all categories and aspects of its work force, which indicates at which levels and in what categories and aspects, if any, the contractor is deficient in the utilization of minority groups; and contains goals and timetables toward the attainment of which the Contractor's good faith effort must be directed to correct those deficiencies.
- (3). The P.A.A. shall apply to all Board contracts except that, with regard to contracts under \$50,000., the Director of the Office of Equal Opportunity shall be authorized to make such modifications as may be appropriate in the individual case.
- (4). The low Bidder's P.A.A. with respect to the affirmative action to be taken by him in connection with equal employment opportunity will be considered by the Board in its determination as to whether the apparent low Bidder is entitled to award of this contract.
- (5). The low Bidder's written P.A.A. must be submitted to the Director of the Office of Equal Opportunity within fifteen (15) days after the bid opening. The Director of the Office of Equal Opportunity acting for the Chancellor shall be the judge of the Program's acceptability.
- (6). In the event the low Bidder fails to submit an acceptable written P.P.A. within the said fifteen (15) days, the Director of Equal Opportunity may recommend that the low bid be rejected, the

amount of the bid deposit be forfeited, and that the low Bidder be disqualified from bidding on Board work for a period of one year.

- (7). Nothing herein shall be interpreted or enforced as requiring the use of quotas in hiring.
- (8). An acceptable Program of Affirmative Action shall also include the following:
 - a. Written evidence or other proof which shows that minority subcontractors have been solicited and given an equal opportunity to submit proposals and that such proposal have been given equal consideration for award. The Office of Equal Opportunity, Board of Education, shall maintain a list of minority contractors which have satisfied the requirements of the Board for competence and financial responsibility.
 - b. A commitment that the low Bidder understands and will comply with the requirement to submit monthly equal opportunity-contractor workforce reports to the Board of Education Office of Equal Opportunity.
 - c. A commitment to good faith efforts to participate in programs for rapid advancement to full journeyman pay scale of minority employees who by training and /or experience can perform the duties of a qualified journeyman.
 - d. The PAA shall specify the unions or other employee organizations from which the contractor anticipates obtaining workers in each building and construction trade, and shall include commitments to good faith efforts to seek to affect, directly or through its contractor's association or other employer organization, programs by such unions or organizations to advance trainees to journeyman status when they successfully complete their course of training and programs to accept new minority apprentices at the rate of no less than one minority apprentice to every three non-minority apprentices.
 - e. Unless otherwise exempted by the Board all facilities of the Contractor, including any which are in any respect separate and distinct from activities of the contractor related to the performance of the contract shall be equally subject to these provisions.
 - f. The P.A.A. or portions thereof, shall be submitted on such forms as shall be provided by the Office of Equal Opportunity, Board of Education.
 - g. The P.A.A. shall include a commitment to submit to the Office of Equal Opportunity, Board, a separate P.A.A. of the form and substance specified in subdivisions (a.) through (f.) hereof, for each subcontractor(s), vendor(s) or supplier(s) prior to its approval by the Board. Such submissions for subcontractors, vendors or suppliers must be submitted to the Director of the Office of Equal Opportunity by the prime contractor and approved at least 30 days prior to their signing of a contract with subcontractors, vendors or suppliers. This requirement includes subcontractors, vendors or suppliers regardless of their tier.
 - h. Unless otherwise exempted by the Board, no specific good faith commitment, including goals of minority manpower utilization, 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 affirmative action program, if any, of the contractor.

V - COMPLIANCE INSPECTION REPORT

Prior to the award of contract if required, 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 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.

8.7 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 of its contracts.

Emphasis is places 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 required 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.: _____

BID SERIAL 1039

GROUP NO. Drinking Water & Indoor Air
Quality, Testing & Analysis

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

8.8 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 non-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. These 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 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 your organization.

8.9 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. _____

8.9. BIDDER INFORMATION CERTIFICATION AND SIGNATURE PAGE (Continued)

(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

2. 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:
3. 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:
4. 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 services, 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, services, apparatus, goods, wares, merchandise, services or labor named and described therein for which bid is made.

****SEE FOLLOWING PAGE** _____

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.
 - A. 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.
 - B. 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.
 - C. 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. The Affirmation will affirm that 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 _____

8.9 CONTINUED

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.

**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.

SECTION 9 **SPECIAL BID TERMS AND CONDITIONS**

9.1 SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

- 9.2** The specification series for this work consists of **one** specification. Awards will be made in **five (5) Aggregate Classes, one for each Integrated Service Center (ISC)** as indicated below.

Aggregate Class 1	Integrated Service Center 1 – Bronx (Districts 7,8,9,10,11,12)
Aggregate Class 2	Integrated Service Center 2_ Queens (Districts 24,25,26,27,28,29,30)
Aggregate Class 3	Integrated Service Center 3 – Manhattan (Districts 1,2,3,4,5,6)
Aggregate Class 4	Integrated Service Center 4 –Richmond/Brooklyn (Districts 13,14,15,16,19,23,32)
Aggregate Class 5	Integrated Service Center 5 – Brooklyn (Districts 17,18,20,21,22,31)

9.3 BID BLANK

Bid blank is a part of this specification and must be completed by the bidder. A separate unit price shall be submitted for each item indicated on Bid blank. A lump sum bid will not be accepted.

9.4 INTENT:

This requirement contract is intended to provide for Environmental sampling and testing services in school buildings and leased premises throughout the boroughs of the City of New York.

9.5 TIME OF COMMENCEMENT AND TERMINATION OF CONTRACT

- A.** This is a **five (5)** year requirement contract for Environmental sampling and testing services for drinking water and indoor air quality (IAQ) sampling and analysis, in school buildings and leased premises throughout the boroughs of the City of New York. The annual estimated values of the contracts in this contract series follow.
1. I.S.C. 1 for \$ 220,000.00
 2. I.S.C. 2 for \$ 225,000.00
 3. I.S.C. 3 for \$ 210,000.00
 4. I.S.C. 4 for \$ 215,000.00
 5. I.S.C. 5 for \$ 200,000.00
- B.** This specification is available for download at the DSF web site:
<http://www.opt-osfns.org/dsf>
- C.** The Board of Education, at its option, may terminate this contract at any time upon thirty (30) days written notice to the contractor, in which event the Board of Education shall be liable to the contractor only for the cost of all work satisfactorily completed up to and including the date of termination. The contractor shall perform all work in an expeditious workmanlike manner. Unnecessary delays in completing Proceed Order work and/or non compliance with the response time may result in cancellation of this contract.

9.6 INSURANCE:

Prior to the start of work and continuing through the final acceptance of all work under the provisions of this contract, the Contractor shall maintain the following types of insurance as required by the form of contract in the amounts set forth below:

- A. Commercial Liability - \$4 Million. (This may be a combination of Insurance and Umbrella/Excess Liability coverage).
Refer to Section 7.19 A. for details.
- B. Automobile Liability - \$1 Million
Refer to Section 7.19 B. for details.
- C. Workers Compensation insurance
Refer to Section 7.19 C. for details.
- D. All Risk Builders Risk Insurance
Refer to: Section 7.19 D. for details.
- E. Subcontractors' Insurance
Refer to Section 7.19 E. for details.
- F. Pollution legal/Professional liability insurance: \$2,000,000.00 per project.

9.7 ADDITIONAL QUALIFICATION OF BIDDER

Each bidder shall submit a notarized statement and all the required documents (in duplicate) along with his bid. Submit the notarized statement attesting to the following:

- a The firm (bidder) has actively and normally engaged in drinking water sampling for potability and lead in strict accordance with United States Environmental Protection Agency (EPA)-Lead in Drinking Water in Schools and Non-Residential Buildings (EPA 812B-94-002 April 1994), and has engaged in indoor air quality (IAQ) work for at least **five (5)** years prior to the date of bid..
- b The firm has sufficient equipment, and trained personnel in order to perform all phases of the contract work and has the ability to perform a minimum of three (3) different projects at any given time.
- c accreditation of the firm's and/or sub-contracted laboratory as an environmental laboratory by the New York State Department of Health Environmental Laboratory Accreditation Program NYS (DOH) ELAP for the category: Potable Water, subcategory: Drinking Water Metals, Lead Total.

Submit The Firm's and/or sub-contracted laboratory's Updated copy of NYS (DOH) ELAP certificate to be utilized for sample analysis for the category: Potable Water, subcategory: Drinking Water Metals, Lead Total .

Submit the list of the equipment, laboratory instrumentation to be used to successfully complete this contract. Include type, make and model number. Submit also the copy of the Certificate of incorporation

- d The contractor (bidder) must demonstrate to the satisfaction of the Director of the Environmental Health and Safety Unit that his/her firm has satisfactorily provided drinking water sampling services to public and/or private schools, in strict Compliance with USEPA-Lead in Drinking Water in Schools and Non-Residential Buildings (EPA 812-B-94-002 April 1994) regulations, with an aggregate drinking water sampling and IAQ work of \$200,000.00 or more in the last four years. Submit the name of a contact person for each project with the telephone number at which The Executive Director of Division of School Facilities or The Director of the Environmental and Safety Unit must be able to verify to their

satisfaction, the information submitted. Include contract amount, start and completion dates, client's name and work location.

- e Submit the names, documented experience, and certifications/training of at least five (5) employees including project manager, Certified Industrial Hygienist (CIH), Industrial Hygienist associated with this project. These Employees shall have documented experience in drinking water sampling, in accordance with USEPA-Lead in Drinking Water in Schools and Non-Residential Buildings (EPA 812-B-94-002 April 1994) guidelines, and IAQ work experience in at least (50) schools and Non-Residential Buildings for the last four years .
- f The contractor shall be required to perform directly and without sub-contracting, not less than 70% of the total contract price. The contractor agrees to submit a notarized statement, when requested by the Department of Education, as proof that he is conforming to the above.

9.8 LIMITATIONS TO AWARD OF CONTRACT:

- a. Except as provided below, only two (2) contracts for Environmental sampling and testing services will be awarded to one Contractor at any one time. If the Contractor is the low bidder on more than one (1) contract, the Contractor will be requested to demonstrate to the satisfaction of the Board of Education, in order to be awarded the additional contract(s), that the Contractor has sufficient qualified personnel, equipment and facilities to insure prompt and efficient service to the Board of Education for each additional contract. The Board of Education will determine which contract(s) will be awarded to responsive and responsible bidder(s) based upon the overall best interest of the Board of Education.
- b. The Contractor will have to demonstrate its capability to perform additional BOE contracts and adequate resources to deploy different work crews concurrently, for each contract, with the Board of Education. Failure to demonstrate capability will be sufficient cause for denial of award of contract.

9.9 METHOD OF BIDDING:

- A: The bidder shall submit unit (bid) price to perform each specified work item(s). Enter the unit (bid) price in **SECTION 10.6 BID BLANK**, in the appropriate boxes. The Bidder is cautioned to use the appropriate Bid Blank for the Integrated Service Center (ISC) for which the bid is being submitted. **SECTION 10.6 BID BLANK** is a part of the Bid Documents and the balance of the Bid Blank must be filled in and completed by the Bidder with the bidding company's information. The bid cannot be accepted without a completed Bid Blank and the Bidders' required information. The determination of the low bidder will be based on this form. Failure to submit this form will result in said bid being declared "Non-Responsive" and the next lowest bid will be considered.
- B. Summary of items to be evaluated and bid: Each Bidder shall consider the **WORK ITEMS** that are listed below and described in **SECTION 10.1 THE WORK**. Considering the work of this specification, the Bidders shall evaluate the costs to their Company for performing each of the **WORK ITEMS**. This evaluation shall include but not be limited to the costs that may be incurred for labor, materials, equipment, supervision and project management, travel time, time on the site, sample collection, laboratory analysis, QA/QC samples and analysis, written report(s), insurance, overhead and profits.

TABLE

WORK

WORK ITEM DESCRIPTION

ITEM

- A. Unit price for site visit per "Person (Industrial Hygienist)": to include maximum of (4) hours to provide visual assessment and/or direct reading measurement and/or microbiological air sampling and/or Drinking water sample collection.

- B. Laboratory analysis:

Unit price per sample for drinking water (B1,B2), and IAQ (B3,B4,B5)
samples: in accordance with USEPA and NYSDOH approved analytical methods

1. Analysis of a metal by using Graphite Furnace Atomic Absorption (GFAA).
2. Analysis of a metal by using Flame Atomic Absorption (FAA)/ (ICP).
3. Identification and characterization of airborne microbes (fungi/bacteria).
4. Total fungal spore counts only, air sample
5. Identification, and characterization of fungi/bacteria in bulk, wipe and/or dust sample

C. Unit price for Equipment per unit per day per site:

1. Handheld aerosol monitor for direct reading measurements or respirable particulates
2. Handheld photo ionization detector for direct reading measurements of volatile organic compounds (VOC)
3. Handheld monitor for direct reading measurement of temperature, relative humidity, carbon dioxide and carbon monoxide
4. Mercury vapor analyzer
5. Microbial air sampling equipment

D. Unit price per hour for Project manager's services.

E. Unit price per hour for Certified Industrial Hygienist (CIH)'s services.

- C. 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).
- D. A ZERO (0) BID OR NO BID ON AN ITEM WILL NOT BE ACCEPTED.

9.10 DETERMINATION OF LOW BIDDER:

Bids will be evaluated by the following procedure:

- A:** The bid unit price submitted by each bidder for each work item shall be multiplied by the respective estimated quantity.
- B:** The product of the above multiplications shall be added.
- C:** The sum obtained from the addition of (B) above shall be designated the "BID EVALUATION INDEX." The lowest "BID EVALUATION INDEX." shall determine the low bidder for each aggregate class.

NOTE: The bid evaluation index shall be used only to determine the low bidder. Payments for each item listed on each proceed order shall be made in accordance with the respective unit prices submitted by the low bidder.

D: Estimated Relative Quantities:

Bidders are warned that the quantities actually required to complete the contract work may be less or more than estimated, and if so, no action for damages or loss of profits shall accrue to contractor by reason thereof.

The estimated quantities indicated in the Bid Blank are a relative approximation of usage based on past experience and it is provided for the convenience of the Board of Education in calculating the BID EVALUATION INDEX and comparing Bids. This usage is not a prediction of future usage by the

Department of Education. The Department of Education has the right to order any quantity that the Director of Environmental Health and Safety or Executive Director deems necessary.

The Department of Education reserves the right during the term of this contract to determine the number of Proceed Orders and the scope of work to be included therein and shall not be deemed to be limited to the estimated amount of the contract, nor does this contract guarantee or obligate the Department of Education to issue a required number of Proceed Orders. The contractor is cautioned that payment will not be made for any work that is not authorized by the Environmental Health & Safety Unit.

9.11 PAYMENT REQUEST:

- A. Request for payment shall be submitted to the Director of the Environmental Health and Safety Unit of the Division of School Facilities.
- B. Each payment request shall be on standard, Department of Education payment #310 form, and shall include proceed orders.
- C. The following information shall be included for each payment request:
 - 1. Project name, P.O. number, number of samples taken, date testing was conducted, by whom it was conducted, and the type of test equipment used.
 - 2. Contractor's written report (in duplicate) for drinking water sampling, testing and analysis.
 - 3. Copy of the signed completed proceed order.
 - 4. Comptroller Certificate.
 - 5. Payroll report.
 - 6. Field verification form.
 - 7. The Environmental Health & Safety Unit will review submissions, and approve or disapprove request for payment.
 - 8. Completed payments (no retainage of monies) will be made, following the satisfactory completion of the work.
 - 9. Should a situation arise where the contractor personnel arrives at the school but is unable to perform the contract work due to subsequent actions or directions from the Department of Education, then a show up fee of \$60.00 per visit may be billed to the Department of Education. (Contractor shall submit a signed letter from custodian engineer or school principal for verification by Environmental Health and Safety Unit)

9.12 PROCEED ORDERS:

- A. The Work of this contract shall be ordered by the Chief Executive of the Division of School Facilities, or a designee, as required. The order for work shall be in a written form only which is designated a Proceed Order. The Proceed Order will contain the name of the site where the work is to be performed, the location at the site, a precise description of the work which is to be provided, and the names of the people to be contacted regarding the work.
- B. Proceed Orders shall be issued to the Contractor throughout the contract period, when and as required. The Contractor shall work continuously each workday as set forth in the proceed order until all work of the Proceed Order has been completed.
- C. There are five different types of Proceed Orders. The Type will be clearly indicated by letter on the Proceed Order document. The types of Proceed Order which may be issued for work on this contract are explained below. All Proceed Orders will have an indicated NOT TO EXCEED (NTE) value. The

Contractor shall immediately call to the attention of the DOE any circumstances that affect the NTE value and shall wait for the Board's direction before proceeding. The Contractor will not be paid any additional monies beyond the NTE value on a Proceed Order without written authorization from the Board. Obtaining timely approval for work in excess of that, which is originally ordered, is the Contractor's responsibility.

1. Type A

A Type A Proceed Order will be utilized for routine Drinking Water Sampling and Analysis & Indoor air Quality Assessment, Testing and Analysis projects. The documents provide a description of work to be performed and its location, complete address of the school, contract number and proceed order number. It will be marked "A" in the upper right hand corner.

The Contractor shall commence the work required by a "Type A Proceed Order" within three (3) working days of receipt of the Order except where a specific start date is given, and will work continuously after school hours and/or weekends as per the work schedule as agreed to by the Director of Environmental Health and Safety and the Contractor, until the work of the Order is completed. The maximum time allowable for the completion of the work of a Type A Proceed Order shall be ten (10) working days unless otherwise set forth in the Order. If there is a reason why work at a site cannot be continuous, the Contractor shall advise the Director of Environmental Health and Safety in writing, giving the reason for the delay, a description of the work remaining and an estimated date when the Contractor will return to work. The Director of Environmental Health and Safety shall review the request and, if approved, may provide the Contractor with written authorization to perform contract work as per the agreed work schedule after school hours and/or on weekends, until the work of the Order is completed.

The Contractor will be paid a minimum of \$250.00 to perform a Type 'A' Proceed Order.

2. Type B

A Type B Proceed Order shall be issued when it is necessary for the Contractor to provide an estimate of cost for the work that is being requested and a description of the work is provided by drawings, sketches and word descriptions.

The Contractor shall commence the work of a Type B Proceed Order within three (3) working days of receipt by visiting the designated site, investigating the condition at issue, prepare a detailed proposal of how it intends to complete the work requested, A detailed cost breakdown for the work is required which lists methods, materials and estimated times. The proposal will access WORK ITEMS which will be taken from this contract's Section 10.1C, Summary of Work Items to be performed. It will include a detailed cost breakdown indicating site assessment, methods, quantities of materials, equipments, number of samples, type of samples, analysis cost, and estimated times. If there are items for which there is no unit price available from this contract, those items should be separately listed, along with labor, quantities, material cost, equipments, type of samples and analysis cost, overhead and profit. A total dollar cost will be provided.

The itemized proposal will utilize any applicable Work Items which have been bid in this contract's Section 10.1.C, Summary of WORK ITEMS to be performed. It will include the total dollar amount required to complete the work as outlined in the Proceed Order. This completed proposal shall be submitted, within (5) calendar days, to the Director of Environmental Health and Safety for review and evaluation. The Contractor shall indicate in this proposal the work schedule during the after school hours and/or on week ends. After review, consultation and any required modifications, the Department of Education (EHS) may accept the proposal, in which case a second Proceed Order (See Type C below) shall be issued for the performance of the proposed work. The Department may, after review, exercise its option to perform the work by other means, in which case a Type C Proceed Order will not be issued.

A Type B Proceed Order will be issued for a minimum of \$300.00, unless other terms and conditions are specifically indicated in the Proceed Order.

3. Type C

A Type C Proceed Order shall be issued when the Department agrees to and accepts the detailed proposal of the Contractor in response to a Type B Proceed Order. A Type C Proceed Order shall include the detailed proposal and pricing provided in the approved Contractor's proposal, and shall incorporate all conditions into the fixed value Proceed Order.

Type C work shall be started within three (3) days of receipt of the Proceed Order unless a later start date is agreed to and approved by the Director of Environmental Health and Safety and shall be continuous until the designated work is completed.

There is no minimum value for a type C Proceed Order

4. Type D

Not applicable to this specification.

5. Type E

A Type E Proceed Order shall be issued for emergency situations. Emergency Proceed Orders will be given verbally with a written Proceed Order following the verbal directive.

Emergency Proceed Orders are to be responded to within four (4) hours of the verbal directive, and the work shall progress continuously until it is complete. Except by mutual agreement, the Board will not issue, per contract, more than one (1) emergency order at a time to the Contractor. All corrective measures required to restore or to prevent existing potential health hazards conditions shall be addressed immediately during the first visit to the site. In the event that the corrective measures cannot be made at the time of the initial visit, or the scope of work includes major repairs, or remediation, in order to ensure reliable operation, an evaluation of the problem, professional estimate of the projected work, and a realistic work schedule shall be provided to the Director of Environmental Health and Safety Unit for review and approval. No major repair or remediation work shall be started without written approval from the Director of Environmental Health and Safety Unit.

A The Contractor will be paid for a minimum of unit bid price for site visit per person (Industrial Hygienist) to perform a Type E proceed Order. Any work required beyond the initial remedy of the emergency condition may, at the option of the DOE, be performed on a requirement contract.

- D. Every Proceed Order shall have a start and finish date, and include a work schedule mutually agreed to by the Director and the Contractor. The completion date shall be binding. If for any reason work cannot be completed in accordance with the schedule, a written application for extension of the completion date shall be submitted to the Board of Education for approval. This request shall include documentation supporting the Contractor's reason for the extension request. The Board of Education will review the request and may approve an extension, in which case an amendment to the Proceed Order will be issued in writing.
- E. Proceed Orders shall be started in numerical order, unless authorization or direction is given by the Board of Education to perform Proceed Order work out of numerical sequence.
- F. Contractor shall submit a report that lists all issued Proceed Orders on this contract, actual start dates and the percentage of completion up to the date of request. The report shall be submitted in an Excel spreadsheet format, or other format as directed by the Director of Environmental Health and safety.
- G. If the Contractor fails to meet the conditions as stated herein, the Board may direct others to do the

work outlined and may initiate appropriate action against this contractor, for failure to perform, as explained elsewhere in these specifications. Any Proceed Order not acted upon by the Contractor within 30 days from the date of issue shall automatically be cancelled, unless reactivated in writing by the Director. The Board of Education will not honor any requests for payment on such cancelled orders. If the Proceed Order is cancelled for this reason, the Board of Education may initiate action against the contractor for failure to perform.

9.13 LIABILITY OF CONTRACTOR:

Contractor and his/her professional(s) who are associated with this project are expected to exercise their skill, necessary competence, ability and judgment reasonably and without neglect, shall perform the specified drinking water and/or IAQ work in strict accordance with EPA ,NYSDOH,NYCDOH requirements.

Failure to meet the above requirements may lead to contractual liability, tort liability and regulatory liability.

9.14 WORK BY OTHERS:

A: The Department of Education reserves the right during the term of this contract to have work performed by its own personnel as the situation may warrant.

B: The Department of Education and the successful low bidder agree that proceed order may be issued for work in any of the five (5) ISC'S at the unit price bid for this contract if a contractor in another Region fails to perform the work required by this specification.

9.15 WORK STOPPAGE AUTHORITY:

In addition to Environmental Health and Safety Unit members, custodians and custodial supervisors or school principal have the authority to stop work should they witness improper work procedures.

SECTION 10
BID SPECIFICATION AND BID BLANK

10.1 THE WORK
SCOPE OF WORK

- A.** The scope of work of this contract shall include but not be limited to providing all labor, material, equipments, supervision and project management, sample collection, laboratory analysis, and written report(s) in various school buildings and leased premises throughout the boroughs of the City of New York. The contractor may be required to work as outlined in each Proceed Order on items such as but not limited to:
- Drinking water sampling and laboratory analysis.
 - IAQ assessment, testing and analysis:
- B.** Persons qualified to perform Drinking water sampling and analysis and/or IAQ assessment, testing and analysis:
- 1.** Person(s) who possess the necessary education, Industrial Hygienist training, certification, skills in appropriate methodology and at least five (5) years experience, in drinking water sampling and analysis, and in Indoor air quality assessment ,testing and analysis.
 - 2.** Sampling and analysis shall be performed by:
The firm who possess the required certifications, training, experience, etc. for drinking water and IAQ sampling, testing and analysis..
- Drinking water and IAQ sample analysis shall be performed by a laboratory with the following:
- a. Skills in the appropriate EPA methodology
 - b. Accreditation in the Environmental Laboratory Accreditation Program administered by New York State Department of Health.
- C.** The Work of this contract shall consist of the performance of the following WORK ITEMS, units of defined work, which shall be required to be performed at designated locations and as directed by Proceed Order. The Unit Price includes all labor, materials, equipment, supervision and project management, travel time, time on the site, sample collection, laboratory analysis, QA/QC samples and analysis, written report(s), insurance, overhead and profits as applicable.

TABLE

**WORK
ITEM****WORK ITEM DESCRIPTION**

- A.** **Unit price for site visit per “Person (Industrial Hygienist)”**: to include maximum of (4) hours to provide visual assessment and/or direct reading measurement and/or microbiological air sampling and/or Drinking water sample collection.
- B.** **Laboratory analysis:**
Unit price per sample for drinking water (B1,B2), and IAQ (B3,B4,B5) samples: in accordance with USEPA and NYSDOH approved analytical methods
1. Analysis of a metal by using Graphite Furnace Atomic Absorption (GFAA).
 2. Analysis of a metal by using Flame Atomic Absorption (FAA)/ (ICP).
 3. Identification and characterization of airborne microbes (fungi/bacteria).
 4. Total fungal spore counts only, air sample
 5. Identification, and characterization of fungi/bacteria in bulk, wipe and/or dust sample
- C.** **Unit price for Equipment per unit per day per site:**
1. Handheld aerosol monitor for direct reading measurements or respirable particulates
 2. Handheld photo ionization detector for direct reading measurements of volatile organic compounds (VOC)
 3. Handheld monitor for direct reading measurement of temperature, relative humidity, carbon dioxide and carbon monoxide
 4. Mercury vapor analyzer
 5. Microbial air sampling equipment
- D.** **Unit price per hour for Project manager’s services.**
- E.** **Unit price per hour for Certified Industrial Hygienist (CIH)’s services.**

NOTES:

1. Bids for above items shall include all costs, as applicable, but not limited to: labor, materials, equipment, supervision and project management, travel time, time on the site, sample collection, laboratory analysis, QA/QC samples and analysis, written report(s), insurance, overhead and profits.
- A. Bids for item A shall include all above costs as applicable except analysis cost.
- B. Bids for item B shall include all above costs as applicable except the travel time and time on the site.
2. All sampling and analytical quality assurance must conform to US EPA and NYSDOH regulations and shall be included in the above unit costs.

3. All water sampling work in the school building shall be performed **prior to school hours** on school days and as directed by Environmental Health and Safety. Water sampling work in the school building during school hours is prohibited. IAQ work shall be performed after school hours.
The contractor shall comply with these requirements, and shall not be reimbursed any additional amount for these services.
4. Contractor shall be compensated @ maximum of two (2) hours per school for project management related services including report writing.
5. Data Entry: Contractor shall be compensated for data entry work @
\$1.00 per sample.
6. Items not included in above, Items A-E:
 - a. Unspecified Laboratory Analysis: **Cost+20% [Overhead and Profit]**
 - b. Unspecified Equipment Rental: **Cost + 20% [Overhead and Profit]**
 - c. Unspecified Labor: **Cost + 20% [Overhead and Profit]**

10.2 RESPONSE TIME:

When work is ordered, the contractor will commence work **no later than (3) days** from time of notification. The Environmental Health and Safety Unit will follow up this notification with a written proceed order. The contractor must submit verbal results and fax reports of drinking water and IAQ samples taken and analyzed to the Environmental Health and Safety Unit **within (24) hours turn around time**. Microbiology samples shall be reported within Normal Turn around Time as applicable and as agreed upon by EHS and Contractor. Written reports are to be received within seven (7) days from date of inspection.

EMERGENCY RESPONSE

During the life of this contract, situations may occur where the Department of Education may request **emergency response** for critical projects. In such situations, the Department of Education will declare the project as an “emergency” and contractor will commence work **within (4) hours from time of notification** unless otherwise directed, and will pay a 50% premium for verbal and fax results received **within (6) hours of test request**. This premium will apply to that portion of the test that pertains to the laboratory analysis only.

10.3 ANALYSIS AND REPORTING RESULTS:

Laboratory analysis and reporting shall be considered evidence of compliance with these regulations only if they conform to the following requirements:

- A. Drinking Water Metals samples shall be reported as per the current NYS DOH ELAP approved analytical methods.
- B. IAQ AND MICROBIAL TESTING—APPLICABLE STANDARD AND REPORTING RESULTS:
 - Reporting of the results shall be as applicable as per the following agency’s established standard: The current issue of each document shall govern. Where conflict among requirements or within these specifications exists, the more stringent requirements shall apply. The Applicable standards are including but not limited to the following:
 - American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)----Ventilation for Acceptable Indoor Air Quality: ASHRAE 62-3001, ASHRAE 55-1992.
 - Industrial Hygienists Guide to Indoor Air Quality Investigations (1993), American Industrial Hygiene association (AIHA).
 - USEPA-United States Environmental Protection Agency
 - NPAAQS-National Primary Ambient Air quality Standard.
 - ACGIH

The following table shall be used as reference only. The table lists target guidelines for the parameters which are generally evaluated during indoor air quality and microbial contamination assessment.

PARAMETER	TARGET LEVEL	AGENCY OR ORGANIZATION
Carbon Dioxide (CO ₂)	< 700 parts per million (ppm) above background level	ASHRAE 62
Carbon Monoxide (CO)	9 ppm	ASHRAE 62 (adopted from USEPA NPAAQS)
Temperature	Summer 73-79°F (at 50% RH) Winter 68-75°F(at 50% RH)	ASHRAE 55
Relative Humidity	30-60 %	ASHRAE 55
Respirable particulates (PM ₁₀)	150 micrograms per cubic meter of air (ug/m ³) 24-hour average. 50 ug/m ³ annual average.	ASHRAE 62 (adopted from USEPA NPAAQS)
Total Volatile Organic Compounds (TVOC)	1 ppm	AIHA
Fungal Spores (genus occurrence)	No *confirmed presence of Stachybotrys spores; Chaetomium or Aspergillus/ Penicillium- like spores are not present at concentrations greater than outdoors	AIHA
Fungal Spores (genus comparison)	Indoor samples are not dominated by taxa that are not found outdoors	AIHA
Fungal Spores (density comparison)	Not significantly greater than outdoor air concentrations	ACGIH and AIHA.

* Confirmed presence – means spores in many samples or many spores in any one sample.

NOTE:

Meeting one, some, or all of the listed values does not assure that acceptable indoor air quality will be achieved at all times.

The assessment of bioaerosol data in regard to whether microbial contamination might be present is based on the following criteria:

- The indoor levels of all fungi in relation to those outdoors; indoor levels should be less than outdoor levels In order for the air quality to be considered acceptable;
- The rank order of dominant spore types indoors in relation to those outdoors; and
- The presence or absence of certain target organisms in the samples.

10.4 CHAIN OF CUSTODY FORM(S), LABORATORY SAMPLE ANALYSIS REPORT

A. Chain of custody forms shall include the following information and must be included in the written report:

- Name and/or number of school building and address.
- Name and address of the contractor.
- Date of drinking water and/or IAQ sampling.
- Name, signature and certification of the person performing Drinking water and/or IAQ sampling and testing.

- Method of delivery to the analytical laboratory, shipping conditions, Date, signature of the appropriate representatives.

B. The laboratory sample analysis report shall include the following information and must be included in the written report:

- Name and/or number of school building and address.
- Name and address of the laboratory, NYS ELAP #/AIHA #
- Method/analytical technique used and the instrument type, make and model number
- Name and signature of the laboratory technician.
- Name and signature of the laboratory director and comments.

10.5 **WRITTEN REPORTS:**

All work shall be done in strict accordance with most stringent all current applicable US EPA, OSHA, NYS(DOH), NYC laws and regulations regarding drinking water and IAQ work, safety and health precautions. Contractor shall submit a detailed written report (in duplicate) to the Environmental Health and Safety Unit within four (4) days from date of completion of the requested service(s).

Written report(s) for Drinking water sampling and testing and/or Indoor air quality and Microbial sampling and testing shall be including but not limited to the following items as applicable:

1. Survey background: shall include location(s), scope of work, applicable Federal, State, City rules and regulations; identify each location(s) and number of samples collected.
2. Drinking water sampling and testing, method/inspection procedure and/or Indoor air quality and Microbial sampling and testing, equipments method/inspection procedure.
3. Chain of custody form(s).
4. Laboratory report for analytical method and sample results.
5. Observation, Findings, Conclusion, Recommendations.

The written report must be submitted to:

MR. BERNARD P. ORLAN, DIRECTOR
ENVIRONMENTAL HEALTH AND SAFETY UNIT, 3RD FLOOR
DEPT.OF EDUACTION
44-36 VERNON BLVD.
LONG ISLAND CITY, NEW YORK 11106
TEL: (718) 361-3808 FAX: (718) 361-3844.

10.6 **BID BLANK**

A. Bidders are required to indicate on the Bid Blank contained herein, the Bid Unit Prices for WORK ITEMS listed in the table of **SECTION 9.9**

B. TABLES

BID BLANK
NOTICE TO ALL CONTRACTORS

THIS BID BLANK MUST BE EXECUTED AND CONTRACTOR'S SIGNATURE IS REQUIRED AT BOTTOM OF THE BID BLANK.

Aggregate Class 1
Integrated Service Center 1 – Bronx.
(Districts.7, 8, 9, 10, 11, 12)

NOTE: The Bidders are required to indicate on the Bid Blank contained herein; the Bid Unit Prices for WORK ITEMS as listed in the table: (refer to Section 9.9). A ZERO (0) BID OR NO BID ON AN ITEM WILL NOT BE ACCEPTED.

1.	2.	3	4	5.
WORK ITEMS	WORK ITEM DESCRIPTION	ESTIMATED RELATIVE QUANTITY	BID UNIT PRICE	TOTAL (3×4)
A.	<u>Unit price per site visit per person</u> <u>(Industrial Hygienist) to include:</u> maximum of (4) hours to provide visual assessment and/or direct reading measurement and/or microbiological air sampling and/or drinking water sample collection.	365 SITE VISITS	\$ _____/VISIT/PERSON	_____
B.	<u>Laboratory analysis:</u> <u>Unit price per sample for drinking water</u> <u>(B1,B2), and IAQ (B3,B4,B5) samples:</u> in accordance with USEPA and NYSDOH approved analytical methods			_____
	1. Analysis of a metal by using Graphite Furnace Atomic Absorption (GFAA)	830 SAMPLES	\$ _____/SAMPLE	_____
	2. Analysis of a metal by using Flame Atomic Absorption (FAA)/ (ICP).	620 SAMPLES	\$ _____/SAMPLE	_____
	3. Identification and characterization of airborne microbes (fungi/bacteria).	150 SAMPLES	\$ _____/SAMPLE	_____
	4. Total fungal spore counts only, air sample.	225 SAMPLES	\$ _____/SAMPLE	_____
	5. Identification, and characterization of fungi/bacteria in bulk, wipe and/or dust sample	100 SAMPLES	\$ _____/SAMPLE	_____

C.	<u>Unit price for Equipment per unit per day per site:</u>			
	1. Handheld aerosol monitor for direct reading measurements or respirable particulates.	35 UNITS	\$_____/UNIT/DAY/SITE	_____
	2. Handheld photo ionization detector for direct reading measurements of volatile organic compounds (VOC).	25 UNITS	\$_____/UNIT/DAY/SITE	_____
	3. Handheld monitor for direct reading measurement of temperature, relative humidity, carbon dioxide and carbon monoxide	60 UNITS	\$_____/UNIT/DAY/SITE	_____
	4. Mercury vapor analyzer.	10 UNITS	\$_____/UNIT/DAY/SITE	_____
	5. Microbial air sampling equipment.	20 UNITS	\$_____/UNIT/DAY/SITE	_____
D.	<u>Unit price per hour for Project manager's services.</u>	725 HOURS	\$_____/HOUR	_____
E.	<u>Unit price per hour for Certified Industrial Hygienist (CIH)'s services.</u>	240 HOURS	\$_____/HOUR	_____
<u>TOTAL AGGREGATE CLASS 1.</u>				\$_____

NAME OF FIRM [BIDDER] SUBMITTING BID: _____

FIRM'S /SUB-CONTRACTOR'S LABORATORY'S NYS ELAP # _____

PRINT NAME & TITLE OF OFFICER/PARTNER: _____

SIGNATURE OF OFFICER/PARTNER. _____

BID BLANK

NOTICE TO ALL CONTRACTORS

THIS BID BLANK MUST BE EXECUTED AND CONTRACTOR'S SIGNATURE IS REQUIRED AT BOTTOM OF THE BID BLANK.

**Aggregate Class 2
Integrated Service Center 2 – Queens.
Districts (24, 25, 26, 27, 28, 29, 30)**

NOTE: The Bidders are required to indicate on the Bid Blank contained herein; the Bid Unit Prices for WORK ITEMS as listed in the table: (refer to Section 9.9). A ZERO (0) BID OR NO BID ON AN ITEM WILL NOT BE ACCEPTED.

1.	2.	3	4	5.
WORK ITEMS	WORK ITEM DESCRIPTION	ESTIMATED RELATIVE QUANTITY	BID UNIT PRICE	TOTAL (3×4)
A.	<u>Unit price per site visit per person (Industrial Hygienist) to include:</u> maximum of (4) hours to provide visual assessment and/or direct reading measurement and/or microbiological air sampling and/or drinking water sample collection.	375 SITE VISITS	\$_____/VISIT/PERSON	_____
B.	<u>Laboratory analysis:</u> <u>Unit price per sample for drinking water (B1,B2), and IAQ (B3,B4,B5) samples:</u> in accordance with USEPA and NYSDOH approved analytical methods			
	1. Analysis of a metal by using Graphite Furnace Atomic Absorption (GFAA)	855 SAMPLES	\$_____/SAMPLE	_____
	2. Analysis of a metal by using Flame Atomic Absorption (FAA)/ (ICP).	635 SAMPLES	\$_____/SAMPLE	_____
	3. Identification and characterization of airborne microbes (fungi/bacteria).	160 SAMPLES	\$_____/SAMPLE	_____
	4. Total fungal spore counts only, air sample.	240 SAMPLES	\$_____/SAMPLE	_____
	5. Identification, and characterization of fungi/bacteria in bulk, wipe and/or dust sample	105 SAMPLES	\$_____/SAMPLE	_____

**C. Unit price for Equipment per unit
per day per site:**

1. Handheld aerosol monitor for direct reading measurements or respirable particulates.	40 UNITS	\$_____/UNIT/DAY/SITE	_____
2. Handheld photo ionization detector for direct reading measurements of volatile organic compounds (VOC).	30 UNITS	\$_____/UNIT/DAY/SITE	_____
3. Handheld monitor for direct reading measurement of temperature, relative humidity, carbon dioxide and carbon monoxide	80 UNITS	\$_____/UNIT/DAY/SITE	_____
4. Mercury vapor analyzer.	18 UNITS	\$_____/UNIT/DAY/SITE	_____
5. Microbial air sampling equipment.	28 UNITS	\$_____/UNIT/DAY/SITE	_____

D. Unit price per hour for Project manager's services.

740 HOURS \$_____/HOUR _____

E. Unit price per hour for Certified Industrial Hygienist (CIH)'s services.

250 HOURS \$_____/HOUR _____

TOTAL AGGREGATE CLASS 2.

\$_____

NAME OF FIRM [BIDDER] SUBMITTING BID: _____

FIRM'S /SUB-CONTRACTOR'S LABORATORY'S NYS ELAP # _____

PRINT NAME & TITLE OF OFFICER/PARTNER: _____

SIGNATURE OF OFFICER/PARTNER. _____

BID BLANK

NOTICE TO ALL CONTRACTORS

THIS BID BLANK MUST BE EXECUTED AND CONTRACTOR'S SIGNATURE IS REQUIRED AT BOTTOM OF THE BID BLANK.

**Aggregate Class 3
Integrated Service Center 3 – Manhattan
(Districts (1, 2, 3, 4, 5, 6))**

NOTE: The Bidders are required to indicate on the Bid Blank contained herein; the Bid Unit Prices for WORK ITEMS as listed in the table: (refer to Section 9.9). A ZERO (0) BID OR NO BID ON AN ITEM WILL NOT BE ACCEPTED.

1.	2.	3	4	5.
WORK ITEMS	WORK ITEM DESCRIPTION	ESTIMATED RELATIVE QUANTITY	BID UNIT PRICE	TOTAL (3×4)
A.	<u>Unit price per site visit per person (Industrial Hygienist) to include:</u> maximum of (4) hours to provide visual assessment and/or direct reading measurement and/or microbiological air sampling and/or drinking water sample collection.	340 SITE VISITS	\$_____/VISIT/PERSON	_____
B.	<u>Laboratory analysis:</u> <u>Unit price per sample for drinking water (B1,B2), and IAQ (B3,B4,B5) samples:</u> in accordance with USEPA and NYSDOH approved analytical methods			
	1. Analysis of a metal by using Graphite Furnace Atomic Absorption (GFAA)	820 SAMPLES	\$_____/SAMPLE	_____
	2. Analysis of a metal by using Flame Atomic Absorption (FAA)/ (ICP).	610 SAMPLES	\$_____/SAMPLE	_____
	3. Identification and characterization of airborne microbes (fungi/bacteria).	150 SAMPLES	\$_____/SAMPLE	_____
	4. Total fungal spore counts only, air sample.	220 SAMPLES	\$_____/SAMPLE	_____
	5. Identification, and characterization of fungi/bacteria in bulk, wipe and/or dust sample	80 SAMPLES	\$_____/SAMPLE	_____

**C. Unit price for Equipment per unit
per day per site:**

1. Handheld aerosol monitor for direct reading measurements or respirable particulates. 30 UNITS \$_____/UNIT/DAY/SITE _____

2. Handheld photo ionization detector for direct reading measurements of volatile organic compounds (VOC). 22 UNITS \$_____/UNIT/DAY/SITE _____

3. Handheld monitor for direct reading measurement of temperature, relative humidity, carbon dioxide and carbon monoxide 55 UNITS \$_____/UNIT/DAY/SITE _____

4. Mercury vapor analyzer. 8 UNITS \$_____/UNIT/DAY/SITE _____

5. Microbial air sampling equipment. 18 UNITS \$_____/UNIT/DAY/SITE _____

D. Unit price per hour for Project manager's services. 700 HOURS \$_____/HOUR _____

E. Unit price per hour for Certified Industrial Hygienist (CIH)'s services. 230 HOURS \$_____/HOUR _____

TOTAL AGGREGATE CLASS 3.

\$_____

NAME OF FIRM [BIDDER] SUBMITTING BID: _____

FIRM'S /SUB-CONTRACTOR'S LABORATORY'S NYS ELAP # _____

PRINT NAME & TITLE OF OFFICER/PARTNER: _____

SIGNATURE OF OFFICER/PARTNER. _____

BID BLANK

NOTICE TO ALL CONTRACTORS

THIS BID BLANK MUST BE EXECUTED AND CONTRACTOR'S SIGNATURE IS REQUIRED AT BOTTOM OF THE BID BLANK.

**Aggregate Class 4
Integrated Service Center 4– Brooklyn.
(Districts. 13, 14, 15, 16, 19, 23, 32)**

NOTE: The Bidders are required to indicate on the Bid Blank contained herein; the Bid Unit Prices for WORK ITEMS as listed in the table: (refer to Section 9.9). A ZERO (0) BID OR NO BID ON AN ITEM WILL NOT BE ACCEPTED.

1.	2.	3	4	5.
WORK ITEMS	WORK ITEM DESCRIPTION	ESTIMATED RELATIVE QUANTITY	BID UNIT PRICE	TOTAL (3×4)
A.	<u>Unit price per site visit per person (Industrial Hygienist) to include:</u> maximum of (4) hours to provide visual assessment and/or direct reading measurement and/or microbiological air sampling and/or drinking water sample collection.	370 SITE VISITS	\$_____/VISIT/PERSON	_____
B.	<u>Laboratory analysis:</u> <u>Unit price per sample for drinking water (B1,B2), and IAQ (B3,B4,B5) samples:</u> in accordance with USEPA and NYSDOH approved analytical methods			
	1. Analysis of a metal by using Graphite Furnace Atomic Absorption (GFAA)	825 SAMPLES	\$_____/SAMPLE	_____
	2. Analysis of a metal by using Flame Atomic Absorption (FAA)/ (ICP).	610 SAMPLES	\$_____/SAMPLE	_____
	3. Identification and characterization of airborne microbes (fungi/bacteria).	155 SAMPLES	\$_____/SAMPLE	_____
	4. Total fungal spore counts only, air sample.	225 SAMPLES	\$_____/SAMPLE	_____
	5. Identification, and characterization of fungi/bacteria in bulk, wipe and/or dust sample	90 SAMPLES	\$_____/SAMPLE	_____

C.	<u>Unit price for Equipment per unit per day per site:</u>			
	1. Handheld aerosol monitor for direct reading measurements or respirable particulates.	35 UNITS	\$_____/UNIT/DAY/SITE	_____
	2. Handheld photo ionization detector for direct reading measurements of volatile organic compounds (VOC).	25 UNITS	\$_____/UNIT/DAY/SITE	_____
	3. Handheld monitor for direct reading measurement of temperature, relative humidity, carbon dioxide and carbon monoxide	60 UNITS	\$_____/UNIT/DAY/SITE	_____
	4. Mercury vapor analyzer.	9 UNITS	\$_____/UNIT/DAY/SITE	_____
	5. Microbial air sampling equipment.	20 UNITS	\$_____/UNIT/DAY/SITE	_____
D.	<u>Unit price per hour for Project manager's services.</u>	715 HOURS	\$_____/HOUR	_____
E.	<u>Unit price per hour for Certified Industrial Hygienist (CIH)'s services.</u>	235 HOURS	\$_____/HOUR	_____
<u>TOTAL AGGREGATE CLASS 4.</u>				\$_____

NAME OF FIRM [BIDDER] SUBMITTING BID: _____

FIRM'S /SUB-CONTRACTOR'S LABORATORY'S NYS ELAP # _____

PRINT NAME & TITLE OF OFFICER/PARTNER: _____

SIGNATURE OF OFFICER/PARTNER. _____

BID BLANK

NOTICE TO ALL CONTRACTORS

THIS BID BLANK MUST BE EXECUTED AND CONTRACTOR'S SIGNATURE IS REQUIRED AT BOTTOM OF THE BID BLANK.

**Aggregate Class 5
Integrated Service Center 5 – Brooklyn/Richmond
(Districts.17, 18, 20, 21, 22, 31)**

NOTE: The Bidders are required to indicate on the Bid Blank contained herein; the Bid Unit Prices for WORK ITEMS as listed in the table: (refer to Section 9.9). A ZERO (0) BID OR NO BID ON AN ITEM WILL NOT BE ACCEPTED.

1.	2.	3	4	5.
WORK ITEMS	WORK ITEM DESCRIPTION	ESTIMATED RELATIVE QUANTITY	BID UNIT PRICE	TOTAL (3×4)
A.	<u>Unit price per site visit per person (Industrial Hygienist) to include:</u> maximum of (4) hours to provide visual assessment and/or direct reading measurement and/or microbiological air sampling and/or drinking water sample collection.	330 SITE VISITS	\$_____/VISIT/PERSON	_____
B.	<u>Laboratory analysis:</u> <u>Unit price per sample for drinking water (B1,B2), and IAQ (B3,B4,B5) samples:</u> in accordance with USEPA and NYSDOH approved analytical methods			
	1. Analysis of a metal by using Graphite Furnace Atomic Absorption (GFAA)	785 SAMPLES	\$_____/SAMPLE	_____
	2. Analysis of a metal by using Flame Atomic Absorption (FAA)/ (ICP).	585 SAMPLES	\$_____/SAMPLE	_____
	3. Identification and characterization of airborne microbes (fungi/bacteria).	130 SAMPLES	\$_____/SAMPLE	_____
	4. Total fungal spore counts only, air sample.	215 SAMPLES	\$_____/SAMPLE	_____
	5. Identification, and characterization of fungi/bacteria in bulk, wipe and/or dust sample	70 SAMPLES	\$_____/SAMPLE	_____

**C. Unit price for Equipment per unit
per day per site:**

1. Handheld aerosol monitor for direct reading measurements or respirable particulates. 35 UNITS \$_____/UNIT/DAY/SITE _____

2. Handheld photo ionization detector for direct reading measurements of volatile organic compounds (VOC). 25 UNITS \$_____/UNIT/DAY/SITE _____

3. Handheld monitor for direct reading measurement of temperature, relative humidity, carbon dioxide and carbon monoxide 55 UNITS \$_____/UNIT/DAY/SITE _____

4. Mercury vapor analyzer. 7 UNITS \$_____/UNIT/DAY/SITE _____

5. Microbial air sampling equipment. 14 UNITS \$_____/UNIT/DAY/SITE _____

D. Unit price per hour for Project manager's services. 725 HOURS \$_____/HOUR _____

E. Unit price per hour for Certified Industrial Hygienist (CIH)'s services. 240 HOURS \$_____/HOUR _____

TOTAL AGGREGATE CLASS 5.

\$_____

NAME OF FIRM [BIDDER] SUBMITTING BID: _____

FIRM'S /SUB-CONTRACTOR'S LABORATORY'S NYS ELAP # _____

PRINT NAME & TITLE OF OFFICER/PARTNER: _____

SIGNATURE OF OFFICER/PARTNER. _____

DATE:

CONTRACT FOR FURNISHING AND DELIVERING

BETWEEN THE New York City DEPARTMENT OF EDUCATION

AND

CONTRACTOR

AMOUNT OF CONTRACT \$

SPECIAL SCHOOL FUND

JULY 1, 200 ~ JUNE 30, 200

CODE NO. _____ \$ _____

CONTRACT AWARDED _____

APPROVED AS TO FORM CERTIFICATION AS TO LEGAL AUTHORITY

ACTING CORPORATION COUNSEL
