

**CITY OF NEW YORK**  
**OFFICE OF EMERGENCY MANAGEMENT**

**REQUEST FOR PROPOSALS**

**GRAPHIC DESIGN SERVICES**

**PIN #: 017EXAF0901**

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**AUTHORIZED AGENCY CONTACT PERSON**

**Proposers are advised that the Authorized Agency Contact Person for all matters concerning this Request for Proposals is:**

|                         |                                                                             |
|-------------------------|-----------------------------------------------------------------------------|
| <b>Name:</b>            | <b>Nydia Colimon</b>                                                        |
| <b>Title:</b>           | <b>Assistant Procurement Analyst</b>                                        |
| <b>Mailing Address:</b> | <b>165 Cadman Plaza East<br/>Brooklyn, NY 11201</b>                         |
| <b>Telephone #:</b>     | <b>718-422-8429</b>                                                         |
| <b>Fax #:</b>           | <b>718-246-6011</b>                                                         |
| <b>E-Mail Address:</b>  | <b><a href="mailto:procurement@oem.nyc.gov">procurement@oem.nyc.gov</a></b> |

**SECTION I - TIMETABLE****A. Release Date of this Request for Proposals: July 31, 2009**

All questions and requests for additional information concerning this RFP should be directed to Nydia Colimon, the Authorized Agency Contact Person. Substantive questions must be submitted in writing by letter, fax or e-mail. Questions received by 8/12/09 will be addressed at the Pre-Proposal Conference. All substantive information (other than information of a proprietary nature to an asking proposer) and questions addressed at the Conference will be included in an addendum to the RFP that will be sent to all organizations known to the Agency to have received a copy of the RFP. The answers to all substantive questions received after the conference and at least two (2) weeks prior to the proposal due date will likewise be issued as an addendum to this RFP.

**B. Pre-Proposal Conference:**

**Date:** August 21, 2009

**Time:** 10:00 A.M.

**Location:** North & South Conference Room, 165 Cadman Plaza East, Brooklyn, NY 11201

Attendance by proposers is optional but recommended by the Agency. Due to security issues at the conference site, if you will attend the Pre-Proposal Conference, you must RSVP by contacting Nydia Colimon at 718-422-8429 no later than 8/19/09 at 5 p.m. Due to space constraints, OEM requests that each organization send no more than two representatives to the Pre-Proposal Conference. Please bring photo ID, and allow adequate time to go through security at the site of the Pre-Proposal Conference.

Attendees are advised that there is no parking available at the conference site.

**C. Proposal Due Date and Time and Location:**

**Date:** September 8, 2009

**Time:** 5:00 P.M.

**Location:** Proposals shall be submitted to OEM headquarters located at 165 Cadman Plaza East Brooklyn, NY 11201.

E-mailed or faxed proposals will not be accepted by the Agency.

Proposals received at this Location after the Proposal Due Date and Time are late and shall not be accepted by the Agency, except as provided under New York City's Procurement Policy Board Rules. The Agency will consider requests made to the Authorized Agency Contact Person to extend the Proposal Due Date and Time prescribed above. However, unless the Agency issues a written addendum to this RFP which extends the Proposal Due Date and Time for all proposers, the Proposal Due Date and Time prescribed above shall remain in effect.

**D. Anticipated Contract Start Date: January 1, 2010**

## **SECTION II - SUMMARY OF THE REQUEST FOR PROPOSALS**

### **A. Purpose of RFP**

The New York City Office of Emergency Management (“OEM”) seeks an appropriately qualified vendor to provide graphic design services. These services may include, but are not limited to, the design of printed advertisements, the design and redesign of Ready New York preparedness guides, the design and redesign of brochures for other OEM programs, the production of graphic features for OEM’s website, and the design of marketing materials for Ready New York and other preparedness events. It is anticipated that over the contract term, the contractor would provide a variety of graphic design services, including the redesign of approximately five to seven brochures or pamphlets, new designs of approximately five to seven new printed products such as advertisements or posters, approximately two to three digital designs for OEM website use, and other collateral designs such as designs for promotional items.

The contractor would assist in the development and preservation of the overall design of OEM’s publications and marketing materials. OEM is committed to teaching New Yorkers about the hazards they face and ways they can better prepare themselves for them. Ready New York is OEM’s educational program to help New Yorkers prepare for all types of emergencies. OEM’s other preparedness programs include Citizen Corps Council, Community Emergency Response Teams, Corporate Emergency Access System, CorpNet, and Continuity of Operations Program. The graphic designer will play a key role in articulating OEM’s preparedness message to New Yorkers throughout the city.

### **B. Anticipated Contract Term**

It is anticipated that the term of the contract awarded from this RFP will be for two (2) years with three (3) two-year options to renew. OEM reserves the right, prior to contract award, to determine the length of the initial contract term and each option to renew, if any.

### **C. Anticipated Available Funding**

It is anticipated that the maximum amount of funding available for the contract awarded from this RFP will be \$250,000. Greater consideration will be given to proposers that propose more competitive prices in combination with a high quality proposal.

### **D. Anticipated Payment Structure**

It is anticipated that the payment structure of the contract awarded from this RFP will be based on a combination of line item reimbursement and deliverables. However, the Agency will consider proposals to structure payments in a different manner and reserves the right to select any payment structure that is in the City’s best interest.

### **SECTION III - SCOPE OF SERVICES**

#### **A. Agency/Department Goals and Objectives for this RFP**

OEM's goals and objectives for this RFP are:

1. To produce high quality, appealing designs that visually support OEM's current printed, electronic, and promotional materials. These designs will be used for OEM's programs that educate New Yorkers on preparedness.
2. To establish and maintain a consistent graphic identity for all of OEM's publicly visible materials.
3. To advise on and develop promotional strategies that increase awareness of Ready New York and general preparedness.

#### **B. Agency/Department Assumptions Regarding Contractor Approach**

The Agency's assumptions regarding which approach will most likely achieve the goals and objectives set out above are:

1. When developing designs for OEM's preparedness programs, the contractor would work closely with OEM personnel to ensure quality and consistency in design.
2. The contractor would have experience doing graphic design work that aims to disseminate educational and public awareness messages. The contractor would have specific experience doing all types and aspects of graphic design services, including, but not limited to, print design, digital or traditional renderings, digital animations, website design, and promotional designs, as well as production coordination.
3. The contractor would supply all types and aspects of graphic design services, including, but not limited to, printed design, digital or traditional renderings, digital animations, website design, designs for promotional items, as well as production coordination.
4. The contractor would provide proofreading services.
5. The contractor would provide production-ready files and resizing services, when requested.
6. The contractor would have a working knowledge of, and in-house availability of, the following software programs: Adobe Illustrator, Professional, Indesign, Photoshop, Flash Design (or a comparable application) and Quark Xpress.
7. During the life of the contract, the contractor would have resources on staff, or to complete projects according to defined specifications and deadlines. The contractor would have the capability to complete occasional small and large projects within tight time frames, and to work on several simultaneous projects if necessary.
8. The contractor would be available for telephone and in-person meetings at OEM headquarters to discuss design and promotional strategies.
9. The contractor would advise OEM on novel, creative design strategies aimed at increasing the reach and impact of OEM's preparedness campaigns.

10. Contractor would have an FTP site or equivalent web space to enable OEM's print or production services to access production-ready files immediately.

11. For each project, the contractor would perform the following duties:

- Prior to the initiation of each project, participate in formal discussions with OEM regarding design and promotional strategy. Upon completion of strategy discussions, produce a price quote and timeline for anticipated deliverables, which would be subject to OEM modification and approval prior to starting any design work.
- Provide a minimum of three (3) initial design concepts for each project, using copy and background information provided by OEM, stock art purchased from photo houses, as well as supplementary research conducted by the contractor.
- Produce draft versions in digital (PDF) format, or small-scale mock-ups of draft concepts as appropriate. Incorporate OEM's feedback and necessary changes to the initial concepts in subsequent drafts. Obtain OEM approval of draft designs.
- Submit all OEM-approved designs and proofs to OEM in high-quality color and format.
- Provide production-ready art on a disk to the printer or manufacturer, as selected by OEM, along with written printing and production instructions, upon approval of a final design by OEM.
- Provide multiple resizes for alternative uses of the designs so that the designs may be displayed in several different media.

**C. Agency/Department Assumptions Regarding Performance-Based Payment Structure**

The Agency's assumptions regarding the performance-based payment structure that will most likely assure that the selected proposer will perform the work under the contract awarded from this RFP in a manner that is cost-effective for the Agency and most likely to achieve the Agency's goals and objectives set out above, is as follows:

- Payment will be tied to the completion and acceptance by all deliverables listed under Section III.B.11

**D. Compliance with Local Law 34 of 2007**

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, vendors responding to this solicitation are required to complete the attached Doing Business Data Form and return it with this proposal, and should do so in a separate envelope. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

## **SECTION IV - FORMAT AND CONTENT OF THE PROPOSAL**

**Instructions:** Proposers should provide all information required in the format below. The proposal should be typed on both sides of "8 ½ X 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% postconsumer 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. The proposal will be evaluated on the basis of its content, not length. Failure to comply with any of these instructions will make the proposal non-responsive.

### **A. Proposal Format**

#### **1. Proposal Cover Letter**

The Proposal Cover Letter form (Attachment A) transmits the proposer's Proposal Package to the Agency. It should be completed, signed and dated by an authorized representative of the proposer.

#### **2. Technical Proposal**

The Technical Proposal is a clear, concise narrative, which addresses the following:

##### **a. Experience**

Describe the successful relevant experience of the proposer, and the proposed key staff in providing the work described in Section III of this RFP. Specifically address the following:

- Previous graphic design work, in particular, work with educational or non-profit organizations, government agencies, or cause-related awareness campaigns.
- Submit two (2) samples of each of the following type of design:
  - a) Educational pamphlets, fact sheets or brochures
  - b) Digital graphics and examples of how they were incorporated into web pages
  - c) Design schemes for promotional items, such as key chains, water bottles or tablecloths used for a client's marketing plan
- For each key staff position, provide résumés for proposed personnel or a description of staff qualifications.

In addition:

- Attach a listing of at least two (2) relevant references, including the name of the reference entity, a brief statement describing the relationship between the proposer, and the reference entity, and the name, title and telephone number of a contact person at the reference entity.

Greater consideration will be given to vendors who have some specialized background in graphic design for educational or non-profit organizations, government agencies, or cause-related awareness campaigns.

##### **b. Organizational Capability**

Demonstrate the proposer's organizational and technical capability to provide the work described in Section III. Specifically address the following:

- Average number of projects each team member works on at any given time.
- Demonstrated ability to provide quality work in tight timeframes.
- List the design programs most commonly used by your firm.

OEM will give greater consideration to vendors who have demonstrated technical capability with the following software programs: Adobe Illustrator, Professional, InDesign, Photoshop, Flash Design (or comparable application) and Quark Xpress.

In addition:

- Attach a chart showing where, or an explanation of how the proposed services will fit into the proposer's organization.
- Attach a copy of the proposer's latest audit report or certified financial statement, or a statement as to why no report or statement is available.

**c. Proposed Approach**

1. Describe in detail how the proposer will provide the work described in Section III of this RFP and demonstrate that the proposer's proposed approach will fulfill the Agency's goals and objectives. Specifically address the following:
  - Steps the proposer takes when it approaches a design project
  - Number of creative concepts typically presented to clients
  - Timeline for the completion of a project using the tasks listed in Section III.B.11 as a guideline
2. Submit a sample for proposal-purposes only, based on this scenario:

OEM requires a hard-copy, one-page, "8.5 x 11" color announcement for an upcoming Ready New York event. This event serves to encourage New Yorkers to prepare for emergencies. The announcement would be posted in the recreation room of a community center. The event details are:

- National Preparedness Month Kick-off in Central Park
- Monday, September 6, 2010
- 10 a.m. – 4 p.m.
- Activities include: Ready New York Presentation, face painting, and giveaways

The Agency's assumptions regarding contractor approach represent what the Agency believes to be most likely to achieve its goals and objectives. However, proposers are encouraged to propose an

approach that they believe will most likely achieve the Agency's goals and objectives. Proposers may also propose more than one approach. However, if an alternative approach affects other areas of the proposal such as experience, organizational capability or price, that alternative approach would be submitted as a complete and separate proposal providing all the information specified in Section IV of this RFP.

### **3. Price Proposal**

Proposers are encouraged to propose innovative payment structures. The Agency reserves the right to select any payment structure that is in the City's best interest. For the purposes of comparison, proposers should submit a Price Proposal that meets the standards of Sections IV(3)(a) and IV(3)(b), below.

#### **a. Proposed Pricing**

The Price Proposal should include each of the following for providing the work described in Section III of this RFP:

- The proposed fee for each of the deliverables listed in Section III.B.11 and total offering price in the format prescribed in the Price Proposal form attached as Attachment B.
- The line item breakdown for all Personnel Services (PS) and Other Than Personnel Services (OTPS) as described in Attachment B, 1.B. and 2.B. The total price for the line item breakdown in Attachment B, 1.B. and 2.B. MUST be equal to the total offering price for the deliverables listed in 1.A. and 2.A.
- The proposed rate for each component of the contract's performance-based payment structure proposed in Section IV(3)(b), below.

#### **b. Performance-Based Payment Structure**

List and describe proposed performance-based payment components (i.e., specific performance-based outcome measures and related financial incentives and/or disincentives, unit payments tied to outcomes, milestone payments tied to outcomes, and/or liquidated damages tied to outcomes) for providing the work to be performed by the proposer under the contract that could potentially be applied to the contract, in whole or part, as a reliable means for measuring and paying for success, as described in Section III of this RFP. The Agency's assumptions regarding performance-based payment structure represents what the Agency believes will most likely achieve its goals and objectives. However, proposers are encouraged to propose measures, incentives and disincentives that they believe will most likely achieve the Agency's goals and objectives in a cost-effective manner. Proposers may also propose more than one approach. Greater consideration will be given to the contractor who can offer the most advantageous payment structure to OEM.

### **4. Acknowledgment of Addenda**

The Acknowledgment of Addenda form (Attachment C) serves as the proposer's acknowledgment of the receipt of addenda to this RFP which may have been issued by the Agency prior to the Proposal Due Date and Time, as set forth in Section I (D), above. The proposer should complete this form as instructed on the form.

**B. Proposal Package Contents (“Checklist”)**

The Proposal Package should contain the following materials. Proposers should utilize this section as a “checklist” to assure completeness prior to submitting their proposal to the Agency.

1. A sealed inner envelope labeled “Technical Proposal,” containing one original set and the stated number (in the parentheses) of duplicate sets of the documents listed below in the following order:
  - Proposal Cover Letter Form (Attachment A) (4)
  - Technical Proposal
    - oo Narrative (4)
      - oo Samples to Demonstrate Experience (Section IV.A.2.a.) (4)
      - oo Sample Project (Section IV.A.2.c.) (4)
    - oo References for the Proposer (4)
    - oo Resumes and/or Description of Qualifications for Key Staff Positions (4)
    - oo Organizational Chart (4)
    - oo Audit Report or Certified Financial Statement or a statement as to why no report or statement is available (4)
  - Acknowledgment of Addenda Form (Attachment C) (4)
2. A separate sealed inner envelope labeled “Price Proposal” containing one original set and the stated number (in the parentheses) of duplicate sets of the Price Proposal.
  - Price Proposal Form (Attachment B) (4)
  - Proposed Performance-Based Payment Structure (4)
3. All proposals must contain a third sealed inner envelope labeled “Doing Business Data Form” containing an original, completed Doing Business Data Form (see Attachment D).
4. A sealed outer envelope, enclosing the three sealed inner envelopes. The sealed outer envelope should have two labels containing:
  - The proposer’s name and address, the Title and PIN of this RFP and the name and telephone number of the Proposer’s Contact Person.
  - The name, title and address of the Authorized Agency Contact Person.

**SECTION V - PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES****A. Evaluation Procedures**

All proposals accepted by the Agency will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by the Agency to be non-responsive will be rejected. The Agency's Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below. The Agency reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as the Agency deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, the Agency reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best programmatic and price terms.

**B. Evaluation Criteria**

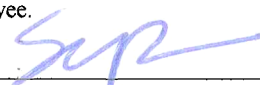
- |                                                                        |     |
|------------------------------------------------------------------------|-----|
| • Demonstrated quantity and quality of successful relevant experience. | 50% |
| • Demonstrated level of organizational capability.                     | 20% |
| • Quality of proposed approach.                                        | 30% |

**C. Basis for Contract Award**

A contract will be awarded to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria which are set forth in this RFP. OEM will only consider those technically viable proposers who propose prices that are equal to or less than the anticipated maximum contract amount (\$250,000). Contract award shall be subject to the following: completion of all deliverables in the stipulated timeframe, availability of funding, submission of Vendex and determination of vendor responsibility, the timely completion of contract negotiations between the Agency and the selected proposer, and registration with the New York City Comptroller.

**SECTION VI - GENERAL INFORMATION TO PROPOSERS**

- A. Complaints.** The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.
- B. Applicable Laws.** This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.
- C. General Contract Provisions.** Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A—General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.
- D. Contract Award.** Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity, and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.
- E. Proposer Appeal Rights.** Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.
- F. Multi-Year Contracts.** Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.
- G. Prompt Payment Policy.** Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.
- H. Prices Irrevocable.** Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.
- I. Confidential, Proprietary Information or Trade Secrets.** Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.
- J. RFP Postponement/Cancellation.** The Agency reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.
- K. Proposer Costs.** Proposers will not be reimbursed for any costs incurred to prepare proposals.
- L. Charter Section 312(a) Certification.**  
The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not directly result in the displacement of any New York City employee.

  
(Agency Chief Contracting Officer)7/31/09  
Date

**Message from the New York City Vendor Enrollment Center**  
**Get on mailing lists for New York City contract opportunities!**  
**Submit a NYC-FMS Vendor Application - Call (212) 857-1680**

**APPENDIX A –****GENERAL PROVISIONS GOVERNING CONTRACTS FOR  
CONSULTANTS, PROFESSIONAL AND TECHNICAL SERVICES****ARTICLE 1. DEFINITIONS**

As used throughout this Agreement, the following terms shall have the meaning set forth below:

- a. “City” shall mean the City of New York, its departments and political divisions.
- b. “Comptroller” shall mean the Comptroller of the City of New York.
- c. “Department” shall mean the City of New York Office of Emergency Management (“OEM”).
- d. “Commissioner” or “Administrator” shall mean the Commissioner of the New York City Office of Emergency Management. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.
- e. “Law” or “Laws” shall include but not be limited to the New York City Charter, the New York City Administrative Code, a local law of the City of New York, and any ordinance, rule or regulation having the force of law.

**ARTICLE 2. REPRESENTATIONS AND WARRANTIES****2.1 PROCUREMENT OF AGREEMENT**

- A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

- B. For a breach or violation of such representations or warranties, the Administrator shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

## **2.2 CONFLICT OF INTEREST**

The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

## **2.3 FAIR PRACTICES**

The Contractor and each person signing on behalf of any contractor represents and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

- A. The prices in this contract 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;
- B. Unless otherwise required by law, the prices which have been quoted in this contract and on the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor; and
- C. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of the above.

## **ARTICLE 3. AUDIT BY THE DEPARTMENT AND CITY**

- 3.1 All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.
- 3.2 The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by said Department and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department and to the Comptroller as they consider necessary.
- 3.3 All books, vouchers, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the State of New York, Federal Government and other persons duly authorized by the City. Such audit may include examination and review of the source and

application of all funds whether from the City, any State, the Federal Government, private sources or otherwise.

- 3.4 The contractor shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

#### **ARTICLE 4. COVENANTS OF THE CONTRACTOR**

##### **4.1 EMPLOYEES**

- A. All experts or consultants or employees of the Contractor who are employed by the Contractor to perform work under this contract are neither employees of the City nor under contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Agreement. Nothing in the contract shall impose any liability or duty on the City for the acts, omissions, liabilities, or obligations of the Contractor any person, firm company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workmen's compensation, disability benefits and social security, or, except as specifically stated in this contract, to any person, firm or corporation.
- B. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damage to any property sustained during its operations and work on the project under this agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the Contractor or not.
- C. **Workers' Compensation and Disability Benefits**
- If this Agreement be of such a character that the employees engaged thereon are required to be insured by the provision of Chapter 615 of the Laws of 1922, known as the "Workers' Compensation Law" and acts amendatory thereto, the Agreement shall be void and of no effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the

life of this Agreement such employees in compliance with the provision of said law, inclusive of Disability Benefits, and, shall furnish the Department with two (2) certificates of such coverage.

**D. Unemployment Insurance**

Unemployment Insurance coverage shall be obtained and provided by the Contractor for its employees.

**E. Minimum Wage**

Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

**4.2 INDEPENDENT CONTRACTOR STATUS**

The Contractor and the Department agree that the Contractor is an independent contract or, and not an employee of the Department or the City of New York, and that in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City of New York, or of any department, agency or unit thereof, by reason hereof, and that they will not, be reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City of New York, including, but not limited to, Workmen's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

**4.3 INSURANCE**

**A. Insurance Requirements for Contractors**

a. Contractors shall procure and maintain for the duration of the contract insurance to protect the Department and the City of New York against any and all claims, loss or damage, whether in contract or tort, including claims for injuries to, or death of persons, or damage to property, whether such injuries, death or damages be attributable to the negligence or any other acts of the Contractor, its agents, employees or subcontractors, or otherwise All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least

AA, unless prior written approval is obtained from the Mayor's Office of Operations. The cost of such insurance shall be born by the Contractor.

b. The City, its officers, officials, and employees shall be covered as insured as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

c. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate Certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

d. The Contractor's insurance coverage shall be primary insurance as respect the City, its officers, officials and employees and the coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials and employees and shall provide that in the event of cancellation thereof the Department shall be notified at least thirty (30) days in advance thereof by certified mail, return receipt requested. Two (2) certificates of insurance shall be delivered to the Department for approval as to form prior to the effective date of this contract.

e. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials and employees.

f. In the event that any claim is made or any action is brought against the City arising out of negligent or careless acts of an employee of the Contractor, either within or without the scope of his employment, or arising out of Contractor's negligent performance of this Agreement, then the City shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action. The rights and remedies of the City provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

g. Any deductibles or self-insured retentions must be declared to and approved by the Department. At the option of the Department, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Department, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims, administration and defense expenses.

h. Contractor shall furnish the Department with Certificates of Insurance and mandated worker's compensation forms effecting coverage required herein.. the certificates for each

insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be on forms that are to be received and approved by the Department before work commences. The Department reserves the right to obtain complete certified copies of all required insurance policies at any time.

B. Required Insurance and Limits

- a. Commercial General Liability. \$1,000,000 combined single limit per occurrence for bodily injury and property damage, minimum \$2,000,000 aggregate;
- b. Automobile Liability. \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage must include all owned, non-owned or hired vehicles used in connection with the work hereunder. The policy must be endorsed to include mandatory personal injury protection;
- c. Worker's Compensation limits as required by the Labor Code of the State of New York, and Employer's Liability insurance, \$1,000,000 per accident. Insurer shall agree to waive all rights of subrogation against the Department, its officers, officials and employees for losses arising from work performed by the Contractor for the Department;
- d. Disability benefits as required by Disability Benefits Law.

**4.4 PROTECTION OF CITY PROPERTY**

- A. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement; and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Contractor as expert, consultant, specialist or subcontractor hereunder.
- B. In the event that any such City property is lost or damaged, except for normal wear and tear, then the City shall have the right to withhold further payments hereunder for the purpose of set-off, in sufficient sums to cover such loss of damage.
- C. The Contractor agrees to indemnify the City and hold it harmless from any and all liability or claims for damages due to any such loss or damage to any such City property described in subsection A above.
- D. The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

**4.5 CONFIDENTIALITY**

All of the reports, information or data, furnished to or prepared, assembled or used by the Contractor under this Agreement are to be held confidential, and prior to publication, the Contractor agrees that the same shall not be made available to any individual or organization without the prior written approval of the Department.

**4.6 BOOKS AND RECORDS**

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

**4.7 RETENTION OF RECORDS**

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for six years after the final payment or termination of this Agreement, whichever is later. City, State and Federal auditors and any other persons duly authorized by the Department shall have full access to and the right to examine any of said materials during said period.

**4.8 COMPLIANCE WITH LAW**

Contractor shall render all services under this Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect at the time such services are rendered.

**4.9 INVESTIGATION CLAUSE**

**4.9.1** The parties to this agreement to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation compel the attendance of witnesses and 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 investigation, audit or inquiry.

**2(a)** If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the

City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

- 2(b)** If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the 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;
- 3(a)** The commission 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 5 below without the City incurring any penalty or damages for delay or otherwise.
- 4.** The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

  - (a)** The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
  - (b)** The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation of 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.

5. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:
  - (a) The party's good faith endeavors or lack thereof to cooperate fully faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
  - (b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
  - (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
  - (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 4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
6.
  - (a) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
  - (b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
  - (c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

- (d) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

7. In addition to and notwithstanding any other provision of this agreement the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days 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 or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

#### **4.10 ASSIGNMENT**

- A. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement or of Contractor’s rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this contract, unless the prior written consent of the Administrator shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.
- B. Failure of the Contractor to obtain any required consent to any assignment, shall be cause for termination for cause, at the option of the Administrator; and if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the contract shall be forfeited to the City except so much thereof as may be necessary to pay the Contractor’s employees.
- C. The provisions of this clause shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.
- D. This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

#### **4.11 SUBCONTRACTING**

- A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior written approval of the Department. Two copies of each such proposed subcontract shall be submitted to the Department with the

Contractor's written request for approval. All such subcontracts shall contain provisions specifying:

1. That the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Department and the Contractor,
  2. that nothing contained in such agreement shall impair the rights of the Department,
  3. that nothing contained herein, or under this Agreement between the Department and the Contractor, shall create any contractual relation between the subcontractor and the Department, and
  4. that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Department and the Contractor.
- B. The Contractor agrees that it is fully responsible to the Department for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.
- C. The aforesaid approval is required in all cases other than individual employer-employee contracts.
- D. The Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.

**4.12 PUBLICITY**

- A. The prior written approval of the Department is required before the Contractor or any of its employees, servants, agents, or independent contractors may, at any time, either during or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement.
- B. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Department shall have a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

**4.13 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 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon the final determination of the Commerce Department or any other agency of the United States as to, or 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 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void this contract.
- C. The Contractor shall comply, in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

**4.14 INVENTIONS, PATENTS AND COPYRIGHTS**

- A. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

- B. No report, document of other data produced in whole or in part with contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the contract.
- C. In no case shall subsections A and B of this section apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activity directly related to this Agreement.

#### **4.15 INFRINGEMENTS**

The Contractor shall be liable to the Department and hereby agrees to indemnify and hold the Department harmless for any damage or loss or expense sustained by the Department from any infringement by the Contractor of any copyright, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement.

#### **4.16 ANTI-TRUST**

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

### **ARTICLE 5. TERMINATION**

#### **5.1 TERMINATION OF AGREEMENT**

- A. The Department and/or City shall have the right to terminate this Agreement, in whole or in part:
  - 1. Under any right to terminate as specified in any section of this Agreement.
  - 2. Upon the failure of the Contractor to comply with any of the terms and conditions of this Agreement.
  - 3. Upon the Contractor's becoming insolvent.
  - 4. Upon the commencement under the Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily.

5. Upon the Commissioner's determination, termination is in the best interest of the City.
- B. The Department of City shall give the Contractor written notice of any termination of this Agreement specifying therein the applicable provisions of subsection A of this section and the effective date thereof which shall not be less than ten (10) days from the date the notice is received.
  - C. The Contractor shall be entitled to apply to the Department to have this Agreement terminated by said Department by reason of any failure in the performance of this Agreement (including any failure by the Contractor to make progress in the prosecution of work hereunder which endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; or any other case beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Department which agrees to exercise reasonable judgment therein. If such a determination is made and the Agreement terminated by the Department pursuant to such application by the Contractor, such termination shall be deemed to be without cause.
  - D. Upon termination of this Agreement the Contractor shall comply with the Department or City close-out procedures, including but not limited to:
    1. Accounting for and refund to the Department or City, within thirty (30) days, any unexpended funds which have been paid to the Contractor pursuant to this Agreement.
    2. Furnishing with thirty (30) days an inventory to the Department or City of all equipment, appurtenances and property purchased through or provided under this Agreement carrying out any Department or City directive concerning the disposition thereof.
    3. Not incurring or paying any further obligation pursuant to this Agreement beyond the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after such date shall be paid by the Department or City in accordance with the terms of this Agreement. In no event shall the "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.

4. Turn over to the Department or City or its designees all books, records, documents and material specifically relating to this Agreement.
  5. Submit, within ninety (90) days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant.
- E. In the event the Department or City shall terminate this Agreement, in whole or in part, as provided in paragraphs 1, 2, 3, or 4 of subsection A of this section, the Department or City may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Agreement to the extent not terminated hereby.
- F. Notwithstanding any other provisions of this contract, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of Contractor's breach of the contract, and the City may withhold payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from the Contractor is determined.
- G. The provisions of the Agreement regarding confidentiality of information shall remain in full force and effect following any termination.
- H. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Agreement.

## **ARTICLE 6: MISCELLANEOUS**

### **6.1 CONFLICT OF LAWS**

All disputes arising out of this Agreement shall be interpreted and decided in accordance with the laws of the State of New York.

**6.2 GENERAL RELEASE**

The acceptance by the Contractor or its assignees of the final payment under this contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the City from any and all claims of and liability to the Contractor arising out of the performance of this contract.

**6.3 CLAIMS AND ACTIONS THEREON**

- A. No action at law or proceeding in equity against the City or Department shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.
- B. No action shall lie or be maintained against the City by Contractor upon any claims based upon this Agreement unless such action shall be commenced within six (6) months after the date of filing in the Office of the Comptroller of the City of the certificate for the final payment hereunder, or within six (6) months of the termination or conclusion of this Agreement, or within six (6) months after the accrual of the Cause of Action, whichever first occurs.
- C. In the event any claim is made or any action brought in any way relating to the Agreement herein, the Contractor shall diligently render to the Department and/or the City of New York without additional compensation any and all assistance which the Department and/or the City of New York may require of the Contractor.
- D. The Contractor shall report to the Department in writing within three (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

**6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this contract.

**6.5 WAIVER**

Waiver by the Department of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of

the Agreement unless and until the same shall be agreed to in writing by the Department or City as required and attached to the original Agreement.

**6.6 NOTICE**

The Contractor and the Department hereby designate the business addresses hereinabove specified as the places where all notices, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified mail shall be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice, direction or communication is received by the party. Such address may be changed at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified above. Nothing in this section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by law, including the Civil Practice Law and Rules.

**6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED**

It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**6.8 SEVERABILITY**

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

**6.9 POLITICAL ACTIVITY**

There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

**6.10 MODIFICATION**

This Agreement may be modified by the parties in writing in a manner not materially affecting the substance hereof. It may not be altered or modified orally. Changes may be made to this Contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee, and in accordance with the PPB Rules. Contractors deviating from the requirements of the original purchase order or contract without a duly authorized change order document, or written contract modification or amendment executed in conformance with the PPB Rules do so at their own risk. Contract changes will be made only for work necessary to complete the work included in the original scope of the contract. Changes are not permitted for any material alteration in the scope of the work

**6.11 PARAGRAPH HEADINGS**

Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this contract and in no way affect this contract.

**6.12 NO REMOVAL OF RECORDS FROM PREMISES**

Where performance of this Agreement involves use by the Contractor of Departmental papers, files, data or records at Departmental facilities or offices, the Contractor shall not remove any such papers, files, data or records, therefrom without the prior approval of the Department's designated official.

**6.13 INSPECTION AT SITE**

The Department shall have the right to have representatives of the Department or of the City or of the State or Federal governments present at the site of the engagement to observe the work being performed.

**ARTICLE 7. MERGER**

This written Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

**ARTICLE 8. CONDITIONS PRECEDENT**

This contract shall neither be binding nor effective unless:

- (a) Approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975, in the event the Executive Order requires such approval; and
- (b) Certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan; and
- (c) Approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act"), in the event regulations of the Board pursuant to the Act require such approval.

- (d) It has been authorized by the Mayor and the Comptroller shall have endorsed his or her certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of carrying out this Agreement.

The requirements of this section of the contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this contract to be effective and for the expenditure of City funds.

## **ARTICLE 9. PPB RULES**

### **Procurement Policy Board Rules:**

This contract is subject to the City of New York Procurement Policy Board Rules ("PPB Rules") in effect at the time the contract was entered into. In the event of a conflict between said PPB Rules and a provision of this contract, the PPB Rules shall take precedence.

### **Prompt Payment Policy:**

The Prompt Payment provisions set forth in Chapter 4, Section 4-06 of the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payments made under this contract. The provisions require the payment to contractors of interest on payments made after the required payment date except as set forth in Section 4-06 of the Rules.

The contractor must submit a proper invoice to receive payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

Determinations of interest due will be made in accordance with the provisions of the Procurement Policy board Rules and General Municipal Law Section 3-a.

**ARTICLE 10. CONTRACT CHANGES**

- A. Changes may be made to this contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Vendors deviating from the requirements of an original purchase order or contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original contract.
- B. Contract changes will be made only for work necessary to complete the work included in the original scope of the contract, and for nonmaterial changes to the scope of the contract. Changes are not permitted for any material alteration in the scope of work. Contract changes may include any contract revision deemed necessary by the Contracting Officer.
- C. The Contractor may be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the contractor may be entitled to an extension of time for performance.
- D. Except in the case of requirements contracts, any contract increases which cumulatively exceed the greater of 10% of the contract amount or \$100,000 must be approved in writing by the City Chief Procurement Officer. Any contract amendment that either amends a unit price, cancels required units, or adds a new type of unit item to the contract must be approved in writing by the Agency Chief Contracting Officer.

**ARTICLE 11. RESOLUTION OF DISPUTES****Resolution of Disputes:**

- 1. Except as provided in 1(a) and 1(b) below, all disputes between the City and the vendor that arise under, or by virtue of, this contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board ("PPB Rules"). This procedure shall be the exclusive means of resolving any such disputes.
  - (a) This section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets

(as interpreted by the courts of New York State) relating to proprietary rights in computer software.

- (b) For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the vendor's work to the contract, and the acceptability and quality of the vendor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the vendor disagrees.
- 2. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.
- 3. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the vendor shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer ("ACCO") or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of any and all claims being presented pursuant to this section and a material breach of contract.
- 4. Presentation of Dispute to Agency Head.
  - (a) Notice of Dispute and Agency Response. The vendor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the vendor

relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the vendor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the vendor to produce any requested material whose relevancy the vendor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the vendor of its claim.

- (b) **Agency Head Inquiry.** The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the vendor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other vendor with a contract related to the work of this contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the vendor initiating the dispute.

- (c) **Agency Head Determination.** Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the vendor and ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.
  - (d) **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the vendor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the vendor and more favorable to the City than the decision of the Agency Head.
- 5. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the vendor to the CDRB, the vendor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
  - (a) **Time, Form, and Content of Notice.** Within thirty (30) days of receipt of a decision by the Agency Head, the vendor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the vendor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head, and (iii) a copy of all materials submitted by the vendor to the agency, including the Notice of Dispute. The vendor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
  - (b) **Agency Response.** Within thirty (30) days of receipt of the Notice of Claim, the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the

Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

- (c) **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the vendor. Willful failure of the vendor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the vendor of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, agency representatives, and any other personnel desired by the Comptroller.
  - (d) **Opportunity of Comptroller to Compromise or Adjust Claim.** The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the vendor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The vendor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.
- 6. **Contract Dispute Resolution Board.** There shall be a Contract Dispute Resolution Board composed of:
  - (a) the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

- (b) the City Chief Procurement Officer (“CCPO”) or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated , and
  - (c) a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.
- 7. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the vendor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.
  - (a) Form and Content of Petition by Vendor. The vendor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the vendor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the vendor to the agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the vendor to, the Comptroller’s Office. The vendor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH’s offices, with proof of service on the Corporation Counsel. In addition, the vendor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

- (b) **Agency Response.** Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the vendor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency response shall be submitted to the CDRB at OATH's offices and one to the vendor. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.
- (c) **Further Proceedings.** The Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the vendor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the agency's case. Neither the vendor nor the agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
- (d) **CDRB Determination.** Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
- (e) **Notification of CDRB Decision.** The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the

Commissioner. A decision in favor of the vendor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.

- (f) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision 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 proceeding that was not presented to the CDRB in accordance with Section 4-09 of the PPB Rules.

- 8. Any termination, cancellation, or alleged breach of the contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this section.

## **ARTICLE 12. STATE LABOR LAW AND CITY ADMINISTRATIVE CODE**

- 1. As required by New York State Labor Law § 220-e:
  - (a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
  - (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, creed, color, sex or national origin;

- (c) That there may be deducted from the amount payable to the Contractor by the City under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this contract; and
- (d) That this contract may be cancelled or terminated by the City and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

2. As required by New York City Administrative Code § 6-108

- (a) It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
- (b) It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
- (c) Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this contract.
- (d) Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

**ARTICLE 13. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

This 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 Court") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Contractor agrees:

- (a) If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered 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 conveniens; (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 might 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 reinstitute 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.

**ARTICLE 14. ELECTRONIC FUNDS TRANSFER**

A. In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

B. The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

**E.O. 50 APPENDIX A RIDER****EQUAL EMPLOYMENT OPPORTUNITY**

This contract is subject to the requirements of Executive Order No. 50 (1980) as revised (“E.O. 50”) and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

- (1) will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) the contractor agrees that when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner’s race, color, creed, national origin, sex, age, disability, marital status or sexual orientation;
- (3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
- (4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder; and
- (5) will furnish all information and reports including an Employment Report before the award of the contract which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Bureau of Labor Services (“Bureau”), and will permit access to its books, records and accounts by the Bureau for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with the E.O. 50 and the rules and regulations promulgated

thereunder. After a hearing held pursuant to the rules of the Bureau, the Director may direct the imposition by the contracting agency held of any or all of the following sanctions:

- (i) disapproval of the contractor;
- (ii) suspension or termination of the contract;
- (iii) declaring the contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Bureau may recommend to the contracting agency head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rule and regulations promulgated thereunder to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rule and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Bureau of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

#### **RIDER: MACBRIDE PRINCIPLES PROVISIONS FOR NEW YORK CITY CONTRACTORS**

Local Law No. 34 of 1991 became effective on September 10, 1991 and added section 6-115.1 to the Administrative Code of the City of New York. The local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of workplace opportunity.

Pursuant to Section 6-115 . 1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business in Northern Ireland operations conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

## PART A

In accordance with section 6-115 .1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

## PART B

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

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

- (1) increase the representation of individuals from under-represented 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 under-represented 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 under-represented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

- (6) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from under-represented 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 under-represented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from under-represented 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.

## ENFORCEMENT

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

**Attachment to Contract****AFFIRMATION**

The undersigned contractor affirms and declares that said contractor 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 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 \_\_\_\_\_

Full name of Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorship\*  
SOCIAL SECURITY NUMBER

\_\_\_\_\_

☐ B - Partnership, Joint Venture or other unincorporated organization  
EMPLOYER IDENTIFICATION NUMBER

\_\_\_\_\_

☐ C - Corporation  
EMPLOYER IDENTIFICATION NUMBER

\_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

If a corporation, place seal here

Must be signed by an officer or duly authorized representative.

\_\_\_\_\_  
\* Under the Federal Privacy Act, the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses which seek City contracts.

**ATTACHMENT A**

**PROPOSAL COVER LETTER**

**RFP TITLE: GRAPHIC DESIGN SERVICES**

**PIN #: 017EXAF0901**

**Proposer:**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Tax Identification #:** \_\_\_\_\_

**Proposer's Contact Person:**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Telephone #:** \_\_\_\_\_

**(Service Option)(Program Option)(Service Area)(Facility Site)(Other) Proposed: [IF APPLICABLE]**

☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_

**Certification of Compliance with Minimum Qualification Requirement(s) [IF APPLICABLE]**

**Proposer's Authorized Representative:**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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

☐ **Yes** ☐ **No**

**ATTACHMENT B****PRICE PROPOSAL FORM**

As indicated in Section II.C. of this RFP, over the course of a two year period, OEM anticipates that the graphic designer will do the following tasks: redesign approximately five to seven brochures or pamphlets, new designs of approximately five to seven new printed products, and approximately two to three digital designs for OEM website use. The anticipated maximum amount of funding available for the contract awarded from this RFP will be \$250,000, with greater consideration given to proposers that propose more competitive prices in combination with a high quality program.

For the subject solicitation, please use this **Price Proposal Form** to indicate your proposed price for each of the following tasks and associated deliverables.

PROPOSED COSTS FOR ONE TYPICAL PRINT DESIGN – EIGHT-PAGE BROCHURE**1.A. Price Proposal, Deliverables**

|    | <b>Deliverable</b>                                                                   | <b>Proposed Cost for <u>one</u> typical print design – eight-page brochure (1.A.)</b> |
|----|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| 1. | Strategy discussions, price quote, timeline for work.                                |                                                                                       |
| 2. | Submission of initial design concepts.                                               |                                                                                       |
| 3. | Submission draft versions in digital format or small-scale mock ups.                 |                                                                                       |
| 4. | Submission and OEM approval of final designs and proofs.                             |                                                                                       |
| 5. | Submission of production-ready art and written printing and production instructions. |                                                                                       |
| 6. | Multiple re-sizes for alternative uses.                                              |                                                                                       |
|    | <b>PROPOSED TOTAL COST FOR ONE TYPICAL PRINT DESIGN – 8 PAGE BROCHURE</b>            | <b>\$ (1.A.)</b>                                                                      |

Note: All expenses should be included in the proposed lump sum cost associated with each deliverable associated with each task.

**1.B. Price Proposal, Line Item Breakdown**

Line item breakdown for one typical print design – eight-page brochure

Note: The Total Task Cost in 1.A. – Deliverables MUST equal the Total Task Cost in 1.A. – Line Item Breakdown.

|                                                     |                       |                   |              |
|-----------------------------------------------------|-----------------------|-------------------|--------------|
| <b>PERSONNEL SERVICES (PS)</b>                      |                       |                   |              |
| <b>Title</b>                                        | <b>Hourly Rate</b>    | <b># of Hours</b> | <b>Total</b> |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
| <b>PS SUBTOTAL</b>                                  |                       |                   | <b>\$</b>    |
| <b>OTHER THAN PERSONNEL (OTPS)</b>                  |                       |                   |              |
| <b>Category (and description of goods/services)</b> | <b>Price per Unit</b> | <b># of Units</b> | <b>Total</b> |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
| <b>OTPS SUBTOTAL</b>                                |                       |                   | <b>\$</b>    |
| <b>TOTAL TASK COST, 1.B.</b>                        |                       |                   | <b>\$</b>    |

PROPOSED COSTS FOR ONE TYPICAL DIGITAL DESIGN – ONE WEBPAGE WITH FLASH (OR EQUIVALENT) FEATURES

**2.A. Price Proposal, Deliverables**

|    | <b>Deliverable</b>                                                                           | <b>Proposed Cost for <u>one</u> typical digital design—one webpage with Flash (or equivalent application) features (1.B.)</b> |
|----|----------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| 1. | Strategy discussions, price quote, timeline for work.                                        |                                                                                                                               |
| 2. | Submission of initial design concepts.                                                       |                                                                                                                               |
| 3. | Submission draft versions in digital format                                                  |                                                                                                                               |
| 4. | Submission and OEM approval of final designs.                                                |                                                                                                                               |
|    | <b>PROPOSED TOTAL COST FOR ONE TYPICAL DIGITAL DESIGN – ONE WEBPAGE WITH FLASH OR EQUIV.</b> | <b>\$ (2.A.)</b>                                                                                                              |

**2.B. Price Proposal – Line Item Breakdown**

Line item breakdown for one typical digital design – one webpage with Flash (or equivalent application) features

Note: The Total Task Cost in 2.A. – Deliverables MUST equal the Total Task Cost in 2.B. – Line Item Breakdown.

|                                                     |                       |                   |              |
|-----------------------------------------------------|-----------------------|-------------------|--------------|
| <b>PERSONNEL SERVICES (PS)</b>                      |                       |                   |              |
| <b>Title</b>                                        | <b>Hourly Rate</b>    | <b># of Hours</b> | <b>Total</b> |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
| <b>PS SUBTOTAL</b>                                  |                       |                   | \$           |
| <b>OTHER THAN PERSONNEL (OTPS)</b>                  |                       |                   |              |
| <b>Category (and description of goods/services)</b> | <b>Price per Unit</b> | <b># of Units</b> | <b>Total</b> |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
|                                                     |                       |                   |              |
| <b>OTPS SUBTOTAL</b>                                |                       |                   | \$           |
| <b>TOTAL TASK COST, 2.B.</b>                        |                       |                   | \$           |

**ATTACHMENT C****ACKNOWLEDGEMENT OF ADDENDA**

Instructions: The respondent is to complete Part I or Part II of this form, whichever is applicable, and sign and date this form. This form serves as the respondent's acknowledgment of the receipt of the Addenda to this Solicitation Document which may have been issued by the OEM prior to the Proposal Due Date and Time.

Part I: Check Box if Applicable: ☐

Listed below are the dates of issue for each Addendum received concerning this Solicitation Document:

Addendum # 1, dated: \_\_\_\_/\_\_\_\_/\_\_\_\_ Addendum # 2, dated: \_\_\_\_/\_\_\_\_/\_\_\_\_

Addendum # 3, dated: \_\_\_\_/\_\_\_\_/\_\_\_\_ Addendum # 4, dated: \_\_\_\_/\_\_\_\_/\_\_\_\_

Addendum # 5, dated: \_\_\_\_/\_\_\_\_/\_\_\_\_ Addendum # 6, dated: \_\_\_\_/\_\_\_\_/\_\_\_\_

---

Part II: Check Box if Applicable: ☐

No addendum was received in connection with this Solicitation Document.

---

Respondent's Company Name:

---

Respondent's Authorized Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT D**

**DOING BUSINESS DATA FORM**



## Doing Business Data Form

| To be completed by the City Agency prior to distribution                                     |                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Agency: 017                                                                                  | Transaction ID: 017EXAF0901                                                                                                                                                                                                                                                                         |
| Check One:<br><input checked="" type="checkbox"/> Proposal<br><input type="checkbox"/> Award | Transaction Type (check one):<br><input type="checkbox"/> Concession <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Economic Development Agreement<br><input type="checkbox"/> Franchise <input type="checkbox"/> Grant <input type="checkbox"/> Pension Investment Contract |

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

**Please return the completed Data Form to the City Agency that supplied it.** Please contact the Doing Business Accountability Project at [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov) or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

### Section 1: Entity Information

Entity Name: \_\_\_\_\_

Entity EIN/TIN: \_\_\_\_\_

#### Entity Filing Status (select one):

- ☐ Entity has never completed a Doing Business Data Form. *Fill out the entire form.*
- ☐ Change from previous Data Form dated \_\_\_\_\_ *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity*
- ☐ No Change from previous Data Form dated \_\_\_\_\_ *Skip to the bottom of the last page.*

Entity is a Non-Profit:    ☐ Yes    ☐ No

Entity Type:    ☐ Corporation (any type)    ☐ Joint Venture    ☐ LLC    ☐ Partnership (any type)  
                  ☐ Sole Proprietor    ☐ Other (specify): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

**Section 2: Principal Officers**

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

**Chief Executive Officer (CEO) or equivalent officer**☐ This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

☐ This person replaced former CEO: \_\_\_\_\_ on date: \_\_\_\_\_

**Chief Financial Officer (CFO) or equivalent officer**☐ This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

☐ This person replaced former CFO: \_\_\_\_\_ on date: \_\_\_\_\_

**Chief Operating Officer (COO) or equivalent officer**☐ This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

☐ This person replaced former COO: \_\_\_\_\_ on date: \_\_\_\_\_

**Section 3: Principal Owners**

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual owners exist, please check the appropriate box to indicate why and skip to the next page. If the entity is owned by other companies, those companies do **not** need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

**There are no owners listed because (select one):**

- ☐ The entity is not-for-profit    ☐ There are no individual owners    ☐ No individual owner holds 10% or more shares in the entity  
☐ Other (explain): \_\_\_\_\_

**Principal Owners (who own or control 10% or more of the entity):**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy) \_\_\_\_\_ Home Phone # \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy) \_\_\_\_\_ Home Phone # \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy) \_\_\_\_\_ Home Phone # \_\_\_\_\_

Home Address: \_\_\_\_\_

**Remove the following previously-reported Principal Owners:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Section 4: Senior Managers**

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. **At least one senior manager must be listed, or the Data Form will be considered incomplete.** If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

**Senior Managers:**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity) \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity) \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity) \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

**Remove the following previously-reported Senior Managers:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Certification**

I certify that the information submitted on these four pages and \_\_\_\_\_ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Entity Name: \_\_\_\_\_

Title: \_\_\_\_\_ Work Phone #: \_\_\_\_\_

**Return the completed Data Form to the agency that supplied it.**

For information or assistance, call the Doing Business Accountability Project at 212-788-8104



DOING BUSINESS ACCOUNTABILITY PROJECT  
**QUESTIONS AND ANSWERS ABOUT THE DOING BUSINESS DATA FORM**

**What is the purpose of this *Data Form*?**

To collect accurate, up-to-date identification information about entities that have business dealings with the City of New York in order to comply with Local Law 34 of 2007 (LL 34), the recently passed campaign finance reform law. LL 34 limits municipal campaign contributions from principal officers, owners and senior managers of these entities and mandates the creation of a *Doing Business Database* to allow the City to enforce the law. The information requested in this *Data Form* must be provided, regardless of whether the entity or the people associated with it make or intend to make campaign contributions. No sensitive personal information collected will be disclosed to the public.

**Why have I received this *Data Form*?**

The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. No proposal or application will be considered and no award will be made unless this *Data Form* is completed. Most transactions valued at more than \$5,000 are considered business dealings and require completion of the *Data Form*. Exceptions include transactions awarded on an emergency basis or by publicly advertised, non-pre-qualified competitive sealed bid. Other types of transactions that are considered business dealings include real property and land use actions with the City.

**What entities will be included in the *Doing Business Database*?**

Entities that hold \$100,000 or more in grants, contracts for goods or services, franchises or concessions (\$500,000 or more for construction contracts), along with entities that hold any economic development agreements or pension fund investment contracts, are considered to be doing business with the City for the purposes of LL 34 and will be included in the *Doing Business Database*. Because all of the business that an entity does or proposes to do with the City will be added together, the *Data Form* must be completed for all covered transactions even if an entity does not currently do enough business with the City to be listed in the *Database*.

**What individuals will be included in the *Doing Business Database*?**

The principal officers, owners and certain senior managers of entities listed in the *Doing Business Database* are themselves considered to be doing business with the City and will also be included in the *Database*.

- **Principal Officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer (COO), or their functional equivalents. See the *Data Form* for examples of titles that apply.
- **Principal Owners** are individuals who own or control 10% or more of the entity. This includes stockholders, partners and anyone else with an ownership or controlling interest in the entity.
- **Senior Managers** include anyone who, either by job title or actual duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any contract, concession, franchise, grant or economic development agreement with the City. At least one Senior Manager must be listed or the *Data Form* will be considered incomplete.

**I provided some of this information on the VENDEX Questionnaire; do I have to provide it again?**

Although the *Doing Business Data Form* and the VENDEX Questionnaire request some of the same information, they serve entirely different purposes. In addition, the *Data Form* requests information concerning senior managers, which is not part of the VENDEX Questionnaire.

**My organization is proposing on a contract with another firm as a Joint Venture that does not exist yet; how should the *Data Form* be completed?**

A joint venture that does not yet exist must submit *Data Forms* from each of its component firms. If the joint venture receives the award, it must then complete a form in the name of the joint venture.



**Will the information on this *Data Form* be available to the public?**

The names and titles of the officers, owners and senior managers reported on the *Data Form* will be made available to the public, as will information about the entity itself. However, personal identifying information, such as home address, home phone and date of birth, will not be disclosed to the public, and home address and phone number information will not be used for communication purposes.

**No one in my organization plans to contribute to a candidate; do I have to fill out this *Data Form*?**

Yes. All entities are required to return this *Data Form* with complete and accurate information, regardless of the history or intention of the entity or its officers, owners or senior managers to make campaign contributions. The *Doing Business Database* must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

**I have already completed a *Doing Business Data Form*; do I have to submit another one?**

Yes. An entity is required to submit a *Doing Business Data Form* each time it proposes on or enters a transaction considered business dealings with the City. However, the *Data Form* has both a No Change option, which only requires an entity to report its EIN and sign the last page, and a Change option, which allows an entity to only fill in applicable information that has changed since the previous completion of the *Data Form*. No entity should have to fill out the entire *Data Form* more than once.

**How does a person remove him/herself from the *Doing Business Database*?**

Any person who believes that s/he should not be listed may apply for removal from the *Database* by submitting a Request for Removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the entity, or the entity no longer being in business. Entities may also update their database information by submitting an update form. Both of these forms are available online at [www.nyc.gov/mocs](http://www.nyc.gov/mocs) (once there, click MOCS Programs) or by calling 212-788-8104.

**How long will an entity and its officers, owners and senior managers remain listed on the *Doing Business Database*?**

- **Contract, Concession and Economic Development Agreement holders:** generally for the term of the transaction, plus one year.
- **Franchise and Grant holders:** from the commencement or renewal of the transaction, plus one year.
- **Pension investment contracts:** from the time of presentation on an investment opportunity or the submission of a proposal, whichever is earlier, until the end of the contract, plus one year.
- **Line item and discretionary appropriations:** from the date of budget adoption until the end of the contract, plus one year.
- **Contract proposers:** for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
- **Franchise and Concession proposers:** for one year from the proposal submission date.

For information on other transaction types, contact the Doing Business Accountability Project.

**What are the new campaign contribution limits for people doing business with the City?**

Contributions to City Council candidates are limited to \$250 per election cycle; \$320 to Borough President candidates; and \$400 to candidates for citywide office. Please contact the NYC Campaign Finance Board for more information at [www.nycctfb.info](http://www.nycctfb.info), or 212-306-7100.

**The *Data Form* is to be returned to the contracting agency.**

If you have any questions about the *Data Form* please contact the Doing Business Accountability Project at 212-788-8104 or [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov).