

**Contract No.** \_\_\_\_\_

**THE CITY OF NEW YORK  
DEPARTMENT OF HOMELESS SERVICES/  
HUMAN RESOURCES ADMINISTRATION/  
DEPARTMENT OF SOCIAL SERVICES**

**PROPOSAL FOR BIDS, BID, AGREEMENT  
AND SPECIFICATIONS**

**FOR FURNISHING ALL LABOR AND MATERIAL  
NECESSARY AND REQUIRED FOR:**

E-PIN#: 09620B0002

PIN#:19BPESR01801

SCOPE: PRE-EMPLOYMENT MEDICAL EXAMINATION FOR PEACE OFFICERS

LOCATION: MANHATTAN

PERIOD OF PERFORMANCE: THREE (3) YEARS FROM DATE OF REGISTRATION WITH OPTION TO RENEW  
FOR ONE TWO (2) YEAR TERM



Human Resources  
Administration

Department of  
Homeless Services

**Office of Contracts**

**Steven Banks**  
Commissioner

**Martha A. Calhoun**  
General Counsel

**Vincent Pullo**  
Agency Chief  
Contracting Officer

**150 Greenwich Street**  
**New York, NY 10007**

**929 221 6347**

## NOTICE TO BIDDERS

Please note this contract is subject to Local Law 1, Minority-Owned and Women-Owned Business Enterprises (MWBE) Requirements. Please ensure all bids are accompanied with a completed Schedule B to be considered responsive. The Schedule B is included in the solicitation documents.

However, Schedule B Waiver requests should be received no later than two (2) weeks prior to the bid due date to ensure proper review. If submitted thereafter, there is a possibility that your request will not be considered. Waiver requests should be submitted to: [mwbe@dss.nyc.gov](mailto:mwbe@dss.nyc.gov) and [leocadid@dss.nyc.gov](mailto:leocadid@dss.nyc.gov).

Additionally, all bids not received by the specified bid close date and time to the **Department of Social Services (HRA & DHS), Office of Contracts/Bid Window, 150 Greenwich Street, 37<sup>th</sup> Floor, New York, NY 10007** will be considered late and will not be accepted.

When delivering bid submissions, all vendors are advised to allow for sufficient time to clear building security, especially if submitting packages. It is the bidders responsibility for ensuring that all submissions are received at the correct location by the due date and time.

To be completed by the City agency prior to distribution Agency \_\_\_\_\_ Transaction ID \_\_\_\_\_

**Check One**

**Transaction Type (check one)**

- Proposal  Award  Concession  Economic Development Agreement  Franchise  Grant  Pension Investment Contract  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, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPort registration or VENDEX requirements.**

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

**Entity Information**

*If you are completing this form by hand, please print clearly.*

Entity EIN/TIN \_\_\_\_\_ Entity Name \_\_\_\_\_

**Filing Status**

**(Select One)**

**NEW:** Data Forms submitted now must include the listing of **organizations**, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

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

*Provide your e-mail address in order to receive notices regarding this form by e-mail.*

**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 \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

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

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 \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

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

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 \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

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

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

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

**Principal Owners**

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the **Senior Managers** section. If the entity is owned by other companies that control 10% or more of the entity, those companies must 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 or organizations that are no longer owners at the bottom of this section. 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
- The entity is an individual
- No individual or organization owns 10% or more of the entity

Other (explain) \_\_\_\_\_

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

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

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

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

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

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

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

**Organization Owners (that own or control 10% or more of the entity)**

Organization Name \_\_\_\_\_

Organization Name \_\_\_\_\_

Organization Name \_\_\_\_\_

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

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

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

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

**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 \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

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

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

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

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

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

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

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

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

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

Name \_\_\_\_\_ removal date \_\_\_\_\_

Name \_\_\_\_\_ removal date \_\_\_\_\_

**Certification**

I certify that the information submitted on these two 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 \_\_\_\_\_ Title \_\_\_\_\_

Entity Name \_\_\_\_\_ Work Phone # \_\_\_\_\_

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

**ACKNOWLEDGEMENT OF ADDENDA**

**Pre-Employment Medical Examinations for Peace Officers in  
Manhattan**

**PIN:19BPESR01801/EPIN: 09620B0002**

**Bid Due Date: Monday, October 26, 2020 by close of business day.**

**Bid Opening Date: Tuesday, October 27, 2020 at 11 a.m.**

**Directions: Complete Part I or Part II, whichever is applicable, and sign your name in Part III.**

**Note: Please submit this Acknowledgement of Addenda with your bid.**

**Part I**

**Listed below are the dates of issue for each Addendum received in connection with this IFB:**

Addendum # 1, Dated \_\_\_\_\_, 20 \_\_\_\_

Addendum # 2, Dated \_\_\_\_\_, 20 \_\_\_\_

Addendum # 3, Dated \_\_\_\_\_, 20 \_\_\_\_

Addendum # 4, Dated \_\_\_\_\_, 20 \_\_\_\_

Addendum # 5, Dated \_\_\_\_\_, 20 \_\_\_\_

Addendum # 6, Dated \_\_\_\_\_, 20 \_\_\_\_

Addendum # 7, Dated \_\_\_\_\_, 20 \_\_\_\_

Addendum # 8, Dated \_\_\_\_\_, 20 \_\_\_\_

Addendum # 9, Dated \_\_\_\_\_, 20 \_\_\_\_

Addendum #10, Dated \_\_\_\_\_, 20 \_\_\_\_

**Part II**

\_\_\_\_\_ **No Addendum was received in connection with this IFB.**

**Part III**

**Proposer's Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Signature of Authorized Representative:** \_\_\_\_\_



Human Resources Administration  
Department of Homeless Services

**Office of Contracts**

**Steven Banks**  
Commissioner

**Martha A. Calhoun**  
General Counsel

**Vincent Pullo**  
Agency Chief  
Contracting Officer

**150 Greenwich Street**  
**New York, NY 10007**

**929 221 6347**

OFFICE OF CONTRACTS  
**IMPORTANT NOTICE TO ALL PROSPECTIVE BIDDERS**

**PIN:19BPESR01801/EPIN: 09620B0002**

**BID DUE DATE: Monday, October 26, 2020 by the close of business day.**  
Bid Opening Date: Tuesday, October 27, 2020 at 11 a.m.

**SCOPE: Pre-Employment Medical Examinations for Peace Officers in Manhattan**

In the event that your organization does not submit a bid for the above referenced contract, you are required to complete the questionnaire provided below if you wish to remain on the active bidders' list of the Human Resources Administration (HRA). Please forward your responses to: Office of Contracts, 150 Greenwich Street, 37<sup>th</sup> Floor, New York, NY 10007.

Failure to respond to this request may result in the removal of the name of your organization from HRA's Bidders' List. Please telephone (929) 221-5535 if you have any questions concerning the questionnaire. Thank you for your cooperation.

**REASONS FOR NOT SUBMITTING A BID (CHECK APPROPRIATE BOXES)**

- 1. Work or service requested not performed by the company.  
Please indicate your organization's type of work or service performed.

---

- 2. Bid request received too late. Insufficient time to plan, estimate and submit a bid.
- 3. Too busy to consider bidding on this contract.
- 4. Unable to meet specifications/other considerations in this proposal.
- 5. Specifications unclear, or improper and inappropriate.
- 6. Unwilling to accept liability, responsibility, or assessments for liquidated damages
- 7. Unable to meet insurance requirements.
- 8. Unable to meet bonding requirements.
- 9. Unable to bid on all components (i.e., all locations)
- 10. Previous unfavorable experience with City contracts/work. Please explain:

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- 11. Other (Specify):

Submitted by: \_\_\_\_\_  
**Federal ID #:** \_\_\_\_\_

\_\_\_\_\_  
(Organization Name)

\_\_\_\_\_  
(Organization Address)

\_\_\_\_\_  
(Prepared by)

(PLEASE PRINT)

**TELEPHONE #:** \_\_\_\_\_ - \_\_\_\_\_

**BID INFORMATION**

**E-PIN: 09620B0002**  
**PIN: 19BPESR01801**

**I. DESCRIPTION OF WORK:** **PRE-EMPLOYMENT MEDICAL EXAMINATION FOR PEACE OFFICERS**

**II. LOCATION OF WORK:** **MANHATTAN**

**III. DOCUMENTS AVAILABLE AT:** **HRA/OFFICE OF CONTRACTS  
BID ADMINISTRATION  
150 GREENWICH STREET, 37<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10007**

**IV. PLACE OF BID OPENING:** **SAME AS ITEM III**

**V. DATE AND HOUR OF BID OPENING** TIME **11:00 AM**  
DATE \_\_\_\_\_

**VI. PRE-BID CONFERENCE – PLACE** **SAME AS ITEM III**  
\_\_\_\_\_  
\_\_\_\_\_

**VII. BID SECURITY:** **SEE PAGE 9**  
\_\_\_\_\_  
\_\_\_\_\_

**VIII. INSURANCE:** **SEE PAGE 13**  
\_\_\_\_\_  
\_\_\_\_\_

**IX. BOND REQUIREMENTS:** **SEE PAGE 14**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**X. AGENCY CONTACT** **PERSON: ANDREA MCGILL**  
**PHONE: (929) 221-6374**

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## **PART I. INFORMATION FOR BIDDERS**

### **SECTION 1. DESCRIPTION AND LOCATION OF WORK**

Description of Procurement: PRE-EMPLOYMENT MEDICAL EXAMINATION FOR PEACE OFFICERS (MANHATTAN)

### **SECTION 2. CONTRACT AND DOCUMENT SUBMISSIONS**

- 2.1 The New York City Office of the Comptroller employs mechanized scanning devices to process the City's contracts and supporting documents. To assist the Human Resources Administration in complying with the City's requirements for contract registration, we request that your bid and/or proposal conform with the City's below listed guidelines for uniform physical attributes to the greatest degree possible.
- 2.2 The bid and/or proposal and all appendices, supporting documents and related materials included as part of your bid and/or proposal submissions:
- a) Should not be bound with glue, spiral combs, tape, staples or other permanent binding materials.
  - b) Should be restricted to either 8.5" x 11" or 8.5" x 14" page sizes and must not contain materials, including divider tabs, which, are larger than or unfold to dimensions larger than these standard sizes. (8.5" x 11" paper is strongly preferred.)
  - c) Must incorporate a table of contents.
  - d) Should make use of both sides of paper.
  - e) Must be readily decipherable. Off center, third and fourth generation photocopies, and poorly printed copies are not acceptable.
  - f) Should avoid the use of colored paper stock and/or fluorescent highlighting.
  - g) Every page in the bid or proposal, including all appendices and attachments should be numbered consecutively to facilitate reference and review by the evaluation and selection committee.
  - h) Superfluous materials in bid and/or proposals documents that are unnecessary or overly repetitive are not to be incorporated into bids and/or proposals. Clarity and conciseness in the presentation of bids and/or proposals shall be considered in the evaluation process.

Some bidders and/or proposers may wish to comply with this requirement by modifying one copy of their bid and/or proposal as a "registration copy". The registration copy must be an unbound, version of the bid and/or proposal that conforms to the above standards. The registration copy must bear the vendor's certification that it is identical to the presentation copies.

### **SECTION 3. TIME AND PLACE FOR RECEIPT OF BIDS**

- 3.1 Sealed bids shall be received by the person and agency specified on Page i on or before the date and hour specified on Page i, at which time they will be publicly opened and read aloud in the presence of the Comptroller and the Commissioner or their representatives, and of any bidders who may desire to be present.
- 3.2 The completed bid must be submitted in a sealed envelope on or before the time and at the place indicated in the Invitation For Bids. The envelope must be marked with the name of

the person, firm or corporation presenting it, the bid opening date, bid number and bid title. The bid and all other documents requiring signature must be signed and notarized.

**SECTION 4. DEFINITIONS**

The definitions set forth in Chapter 1, Section 1-01 of the Procurement Policy Board Rules shall apply to this Invitation for Bids.

**SECTION 5. INVITATION FOR BID DOCUMENTS**

5.1 For particulars as to this procurement, including quantity and quality of the purchase, extent of the work or labor to be performed, delivery and performance schedule, and any other special instructions, prospective bidders are referred to the Invitation For Bids documents. A copy of such documents can be obtained at the locations set forth on Page i.

**SECTION 6. PRE-BID CONFERENCE (OPTIONAL)**

A(n) mandatory/optional pre-bid conference shall be held on the date, at the time and at the location set forth below:

Time: \_\_\_\_\_

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

Place: \_\_\_\_\_

(including room number, if applicable) |

Nothing stated at the pre-bid conference shall change the terms or conditions of the Invitation For Bids unless a change is made by written amendment as provided in Section 12, below.

Failure to attend a mandatory pre-bid conference shall constitute grounds for the rejection of your bid.

Please notify the Agency Contact of the number of representatives from your firm that will attend the conference at least five (5) City working days before the date of the pre-bid conference.

**SECTION 7. AGENCY CONTACT**

Any questions or correspondence relating to this bid solicitation shall be addressed to:

Name: **ANDREA McGILL**

Address: **150 GREENWICH STREET 37<sup>th</sup> Floor New York, NY 10007**

Telephone: **(929) 221- 6374**

**SECTION 7A. EXAMINATION OF PROPOSED CONTRACT**

7A.1 Request for Interpretation or Correction - Prospective bidders must examine the contract documents carefully and before bidding must request the Commissioner in writing for an interpretation or correction of every patent ambiguity, inconsistency, or error therein which should have been discovered by a reasonably prudent bidder. Such interpretation or correction, as well as any additional contract provisions the Commissioner may decide to include, will be issued in writing by the Commissioner as an addendum to the contract, which will be sent by mail or delivered to each person recorded as having received a copy of the contract documents from the Contract Clerk, and which also will be posted at the place

where the contract documents are available for the inspection of prospective bidders. Upon such mailing or delivery and posting, such addendum shall become a part of the contract documents, and binding on all bidders, whether or not actual notice of such addendum is shown.

- 7A.2 Only Commissioner's Interpretation or Correction Binding - Only the written interpretation or correction so given by the Commissioner shall be binding and prospective bidders are warned that no other officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the contract.

#### SECTION 8. BIDDER'S OATH

- 8.1 The bid shall be properly signed by an authorized representative of the Bidder and the bid shall be verified by the written oath of the authorized representative who signed the bid, that the several matters stated and information furnished therein are in all aspects true.
- 8.2. A materially false statement willfully or fraudulently made in connection with the bid or any of the forms completed and submitted with the bid may result in the termination of any contract between the City and the Bidder. As a result, the Bidder may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.

#### SECTION 9. SITE VISIT

Where the Invitation For Bids involves performance of services on City facilities, all bidders are under a duty to inspect and are expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the Contract. In no event will a failure to inspect a site constitute grounds for withdrawal of a bid after opening or for a claim after award of the Contract.

#### SECTION 10. BIDS SHALL BE TYPEWRITTEN OR WRITTEN LEGIBLY IN INK

The bid shall be typewritten or written legibly in ink. The bid shall be signed in ink. Erasures or alterations shall be initialed by the signer in ink.

#### SECTION 11. IRREVOCABILITY OF BID

The prices set forth in the bid cannot be revoked and shall be effective until the award of the contract unless the bid is withdrawn as provided for in Sections 15 and 18, below.

#### SECTION 12. ACKNOWLEDGMENT OF AMENDMENTS

The receipt of any amendment to the contract documents shall be acknowledged by the Bidder.

#### SECTION 13. BID SAMPLES AND DESCRIPTIVE LITERATURE

Bid samples and descriptive literature shall not be submitted by the Bidder, unless expressly requested elsewhere in the contract or contract documents. Any unsolicited bid samples or descriptive literature that are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of this contract.

#### SECTION 14. PROPRIETARY INFORMATION/TRADE SECRETS

The Bidder shall identify those portions of bid that they deem to be confidential, proprietary information or trade secrets, and provide justification why such materials shall not be disclosed by the City. All materials the Bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word

"Confidential". Such materials stamped "Confidential" must be easily separable from the non-confidential sections of the bid. All such materials so indicated shall be reviewed by the Agency and any decision not to honor a request for confidentiality shall be communicated in writing to the Bidder. For those bids that are unsuccessful, all such confidential materials shall be returned to the Bidder [with the exception of one copy, which shall be retained by the City and held in a secure and confidential manner]. Prices, makes and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the Bidder.

#### SECTION 15. PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

Bids may be modified or withdrawn by written notice received in the office designated on Page i, above, before the time and date set for the bid opening.

If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the Bidder.

All documents relating to the modification or withdrawal of bids shall be made a part of the agency contract file.

#### SECTION 16. BID EVALUATION AND AWARD

1. General. In accordance with the New York City Charter, the Procurement Policy Board Rules and the terms and conditions of this Invitation For Bids, the responsible bidder whose bid meets the requirements and objectively measurable evaluation criteria set forth in the Invitation For Bids, and whose bid price is the most favorable bid price or, if the Invitation For Bids so states, the lowest responsive and responsible evaluated bid price shall be selected for the contract. A bid shall not be evaluated for any requirement or criterion that is not disclosed in the Invitation For Bids.
2. Negotiations with Apparent Lowest Responsive and Responsible Bidder. Upon determination of the apparent lowest responsive and responsible bidder and prior to award, the Contracting Officer may elect to open negotiations with the selected vendor in an effort to improve the bid to the City with respect to the price only. In the event the apparent lowest responsive and responsible bidder declines to negotiate, the Contracting Officer may elect to either award the contract to the apparent lowest responsive and responsible bidder or may, upon written approval by the ACCO, reject all bids in accordance with Section 21, below. The result of negotiations, if any, shall be documented in the Recommendation for Award.
3. Award. Upon the determination of the lowest responsive and responsible bidder, a written Recommendation of Award shall be prepared by the Contracting Officer and submitted to the ACCO for written approval. After approval has been obtained, the contract shall be awarded to that bidder. The Recommendation for Award shall be part of the permanent contract file.

#### SECTION 17. LATE BID, LATE WITHDRAWALS AND LATE MODIFICATIONS

Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered.

The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received and may be accepted

upon the written approval of the Agency Chief Contracting Officer.

A record shall be made of each request for late bid acceptance, modification or withdrawal, which shall be retained in the agency contract file. Late bids and modifications shall not be opened until after registration of the contract.

#### SECTION 18. WITHDRAWAL OF BIDS

Except as provided for in Section 15, a bidder may not withdraw its bid before the expiration of forty-five days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of the actual award.

#### SECTION 19. MISTAKES IN BIDS

##### 1 General

In accordance with Chapter Three, Section 3-02(m) of the Procurement Policy Board Rules, correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible, but only to the extent that it is not contrary to the interest of the City or the fair treatment of other bidders.

##### 2 Mistake Discovered Before Bid Opening

A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 15, above.

##### 3 Confirmation of Bid.

When the Contracting Officer knows or has reason to conclude after bids have been publicly opened that a mistake has been made, such officer shall request from the Bidder written verification of the bid. If the Bidder alleges mistake, the bid may be corrected or withdrawn upon written approval of the ACCO if the following conditions are met:

- a. **Minor Informalities.** Minor informalities in bids are matters of form, rather than substance, evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City. Examples include the failure of a bidder to:
  - (i) return the number of signed bids required by the IFB, or
  - (ii) acknowledge receipt of an amendment to the IFB, but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms, or the amendment involved had a negligible effect on price, quantity, quality, or delivery.
- b. **Mistakes Where Intended Correct Bid is Evident.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are

typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

- c. Mistakes Where Intended Correct Bid is Not Evident. Mistakes may not be corrected after bid opening. A bidder may be permitted to withdraw a low bid where a unilateral error or mistake has been discovered in the bid and the Contracting Officer makes the following determination, which shall be approved by the Agency Chief Contracting Officer:
- (i) the mistake was known or made known to the agency prior to vendor selection or within three days after the opening of the bid, whichever period is shorter;
  - (ii) the price bid was based on an error of such magnitude that enforcement would be unconscionable;
  - (iii) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;
  - (iv) the error in bid is actually due to an unintentional and substantial arithmetic error or unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
  - (v) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.

Upon approval of the Agency Chief Contracting Officer, the bid may be withdrawn, and the bid bond or other security returned to the Bidder. The contract shall either be awarded to the next lowest bidder or resolicited pursuant to the Procurement Policy Board Rules. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

4 Mistakes Discovered After Vendor Selection.

Mistakes shall not be corrected after Vendor Selection except where the Agency Chief Contracting Officer, subject to the approval of City Chief Procurement Officer, makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

5 Determinations Required.

When a bid is corrected or withdrawn, or correction or withdrawal is denied, the ACCO shall prepare a determination showing that the relief was granted or denied in accordance with these Rules.

SECTION 20. LOW TIE BIDS

- 1 When two or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation For Bids, the Agency Chief Contracting Officer shall break the tie in the following manner and order of priority:

- (i) Select a certified New York City small minority or woman-owned business entity

bidder;

- (ii) Select a New York City bidder;
- (iii) Select a certified New York State small, minority or woman-owned business bidder;
- (iv) Select a New York State bidder.

2 If two or more bidders still remain equally eligible after application of paragraph (a) above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

#### SECTION 21. REJECTION OF BIDS

1 Rejection of Individual Bids. The Agency Head may reject a bid if:

- a. The bidder fails to furnish any of the information required pursuant to Section 25 or 36 hereof; or if
- b. The Bidder is determined to be not responsible pursuant to the Procurement Policy Board Rules; or if
- c. The bid is determined to be non-responsive pursuant to the Procurement Policy Board Rules; or if
- d. The bid, in the opinion of the Commissioner, contains unbalanced bid prices and is thus non-responsive, unless the Bidder can show that the prices are not unbalanced for the probable required quantity of such item, or if the imbalance is corrected pursuant to Section 17.

2. Rejection of All Bids. The Agency, upon written approval by the Agency Chief Contracting Officer, may reject all bids and may elect to resolicit by bid or by other method authorized by the PPB Rules.

#### SECTION 22. RIGHT TO APPEAL DETERMINATIONS OF NON-RESPONSIVENESS OR NON-RESPONSIBILITY AND RIGHT TO PROTEST SOLICITATIONS AND AWARD

The Bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award, pursuant to Chapter 2, Section 2-08, of the Procurement Policy Board Rules. In filing a appeal of a determination of non-responsiveness or non-responsibility with HRA in accordance with the Procurement Policy Board Rules, a bidder is to deliver the appeal to the Office of the Commissioner at 150 Greenwich Street, New York, N.Y. 10007.

#### SECTION 23. CONTRACTOR'S COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

This invitation to bid is subject to Title II of the Americans with Disabilities Act of 1990 ("ADA") and regulations promulgated pursuant thereto which prohibits discrimination against individuals with a disability, as defined in the ADA, by a public entity in providing services, programs or activities to the public.

#### SECTION 24. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

This Invitation to Bid is subject to applicable provisions of Federal, State and Local Laws and

executive orders requiring affirmative action and equal employment opportunity.

**SECTION 25. Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)**

1. All organizations intending to do business with the City of New York must complete the disclosure process in order to be considered for award of a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. The City of New York has now moved collection of vendor disclosure information online. In anticipation of awards, potential bidders must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings. Any reference to VENDEX in the Information for Bidders should be deemed to be a reference to PASSPort;

For more information about PASSPort, please visit [nyc.gov/passport](http://nyc.gov/passport).

PURSUANT TO ADMINISTRATIVE CODE 6.116.2 AND SECTION 2-08 OF THE RULES OF THE PROCUREMENT POLICY BOARD (9 RCNY 2-08), BIDDERS MAY BE OBLIGATED TO SUBMIT A COMPLETED ONLINE DISCLOSURE FILING WITH THIS BID. GENERALLY, IF THIS BID IS \$250,000 OR MORE, OR IF THIS BID WHEN ADDED TO THE SUM TOTAL OF ALL CONTRACTS, CONCESSIONS AND FRANCHISES THE BIDDER HAS RECEIVED FROM THE CITY AND ANY SUBCONTRACTS RECEIVED FROM CITY CONTRACTORS OVER THE PAST TWELVE MONTHS, EQUALS OR EXCEED \$250,000 AN ONLINE DISCLOSURE FILING MUST BE COMPLETED.

2. This Section 25 shall only apply to contracts in excess of \$250,000.00 and/or a Contractor whose aggregate business with the City in the preceding 12 months including this contract totals \$250,000.00 or more.
3. The online disclosure process is part of and applies to this Invitation For Bids. The Contract award shall be subject to the submission by the proposer of the requisite online disclosure process and review of the information contained therein by the New York City Department of Investigation and all other required oversight approvals.
4. The Bidder or contractor shall obtain complete questionnaires from each subcontractor it proposes to use and shall attach such questionnaires to the list of subcontractors it submits to the Commissioner for his or her approval. Subcontractors are required to enroll in PASSPort as well.
5. All changes in officers, directors or corporation or members of firms or partnerships made after the initial submission of the Bidder's, contractor's, or subcontractor's questionnaires shall be immediately filed with the Agency in the form of a sworn statement. Non-compliance with any of the foregoing provisions may result in non-acceptance of a bid, disqualification of the Bidder, disapproval of a submitted subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after its award, at no liability to the City.
6. The Bidder shall duly execute and file all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor's Office of Contract Services. The bidder acknowledges that the Department's reliance on the

completeness and veracity of the information stated therein is a material condition to the award of the contract, and the bidder represents and warrants that the information it and its principals provide therein is accurate and complete.

## SECTION 26. BID PROCESS

The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism or impropriety in the bid process including fraudulent or unlawful activity, should inform the Comptroller, Office of Contract Administration, One Centre Street, Room 835, New York, New York, telephone number (212) 669-3000.

## SECTION 27. BID SECURITY

- a. Bid Bond. If required in the Schedule of Bonds and Liability Insurance in this Invitation For Bids, no bid will be received or considered which is not accompanied by a Bid Bond (in the form set forth herein) issued by a surety company which is authorized to do business in the State of New York.
- b. The Bid Bond shall insure the City of New York to the extent of not less than 10% of the amount of the Bid Contract Price.
- c. In lieu of a Bid Bond, the bid may be accompanied by a deposit in approximately the sum of 2% of the amount of the Bid Contract Price. Such deposit shall consist of a money order or a certified check upon a state or national bank or trust company or a check of such bank or trust company signed by a duly authorized officer thereof, drawn to the City which the Comptroller shall approve as of equal value with the sum so required.
- d. The bid deposit, in whatever form, must not be enclosed in the envelope containing the bid, but must be submitted separately to the Commissioner's representative upon presentation of the bid.
- e. The Bid Bond, or check, or money order, or cash as the case may be, shall assure the City of New York, and the Agency of the adherence of the Bidder to its bid and the execution of the contract, in form as annexed hereto, if its bid is accepted.
- f. Return of Deposit. Within five (5) days after the opening of the bids, the Comptroller will be notified to return the deposit of all but the three lowest bidders. Within five (5) days after the award, the Comptroller will be notified to return all the deposits of the remaining two unsuccessful bidders. Where all bids are rejected, the Comptroller will be notified to return the deposit of the three lowest bidders at the time of rejection. If performance/payment bonds are required to be furnished for this contract, the bid deposit of the successful bidder will be released upon the registration of the contract by the Comptroller. If performance/payment bonds are not required to be furnished, such bid deposit will be returned by the Comptroller only after the satisfactory completion of the contract.

## SECTION 28. FINANCIAL QUALIFICATIONS

- a. The Agency may require any bidder or prospective bidder to furnish all books of account, records, vouchers, statements or other information concerning the Bidder's financial status for examination as may be required by the Agency to ascertain the Bidder's responsibility

and capability to perform the contract.

- b. If the Bidder fails or refuses to supply any of the documents or information set forth in paragraph (a) hereof or fails to comply with any of the requirements thereof, the Administrator may reject the bid.

## SECTION 29. SUPPLY AND SERVICE BID LANGUAGE

- 1 This contract will be subject to the Mayor's Executive Order No. 50 (1980)(E.O. 50) and the rules and regulations promulgated thereunder. E.O. 50 requires municipal contractors to be equal opportunity employers who do not discriminate against employees and applicants for employment in any employment decision, based on race, color, creed, national origin, sex, age, disability, marital status or sexual orientation.
- 2 Before the contracting agency may award the contract, the proposed contractor (low bidder or identified vendor) must fulfill E.O. 50's requirements in their entirety. The proposed contractor on a contract in excess of \$100,000 must submit to the contracting agency a fully completed Supply and Service Employment Report (ER)(APPENDIX III), if the contractor employs at least 50 employees. (Such covered contractors who employ less than 50 employees must complete and submit an affidavit to that effect. The affidavit is part of the ER.) The contracting agency will send the ER to the Bureau of Labor Services (Bureau) for pre-award review. The contractor must file an ER for each facility involved in performing the contract. The ER requires the contractor to submit four kinds of information:
  - a. information about the nature and results of previous government audits or complaints concerning the contractor's compliance with equal employment opportunity (EEO) requirements, along with copies of existing Affirmative Action Plans (AAPs);
  - b. copies of fringe benefit plans, personnel manuals, employment applications and collective bargaining agreements where applicable;
  - c. information concerning the contractor's employment policies and practices in such areas as recruitment, selection and promotion of employees, validation of selection devices, content and dissemination of EEO policies, pre-employment physical exams, architectural barriers and facilities for disabled employees, compensation and fringe benefits; and
  - d. a detailed analysis of the racial and sexual composition of the contractor's workforce by job group. The contractor must fill out four data tables, including a job match/job group form. The job match/job group form gathers the contractor's job titles into job groups. The other forms require among other things, incumbent, new hire (including salary), promotion and termination (including age) information by race and sex.
- 3 Effective September 1, 1984, instead of completing the data tables (including job match/job group form) contractors that maintain personnel information on a computerized data base will be expected to submit the information on computer tapes in the format set forth by the Bureau. Copies of the format, the ER, E.O. 50 and the rules and regulations are available upon request from the contracting agency.
- 4 The Bureau will review the completed ER and will authorize the contracting agency to award the contract if the Bureau finds that the contractor complies with E.O. 50 and the implementing regulations. However, if the Bureau's review identifies under-utilization of

minorities or women or employment practices that do not comply with E.O. 50, the Bureau may first confer with the contractor to develop an Employment Program to correct these problems. Failure to meet the requirements of E.O. 50 may result in the imposition of sanctions including disapproval of the contractor, or suspension or termination of the contract.

- 5 Every subcontract or purchase order (performing part of the prime contract) in excess of \$100,000 is also subject to the mandates of E.O. 50 and its rules and regulations. The prime contractor must notify each of its subcontractors or vendors of the requirements and the obligation to submit an ER and must ensure that each subcontractor or vendor submits the ER to the contracting agency.
- 6 The contract that the vendor and agency will enter into is mandated to contain E.O. 50 language. The required contractual language is part of Part III., Section 7.7.

### SECTION 30. DIVISION OF LABOR SERVICES INFORMATION

- a. Who Must File A Complete Employment Report - (APPENDIX III) In accordance with Executive Order No. 50 (1980) and its implementing Regulations (E.O. 50), the filing of a completed Employment Report (ER) is a requirement of doing business with the City of New York if you meet all of the following conditions:
  1. you have been identified as the lowest bidder for a supply or service contract or your proposal for supplies or services has been accepted;
  2. the contract value exceeds \$100,000;
  3. your firm employs 50 or more people, and please note that
  4. suppliers, subcontractors or vendors performing on the contract who meet conditions 2 and 3, also must file an ER.
- b. Who Must File A Less Than 50 Employees Certificate
  1. If your company or any of its facilities performing on the contract has fewer than 50 employees, although the contract value exceeds \$100,000, you need only submit a "Less Than 50 Employees Certificate".
  2. If there is subcontractor, supplier or vendor to the prime contractor and any of its facilities performing on the contract has fewer than 50 employees, although the subcontract value exceeds \$100,000, it need only submit the "Less Than 50 Employees Certificate".

### SECTION 31. PROCUREMENT POLICY BOARD RULES

This Invitation for Bids is subject to the Rules of the Procurement Policy Board of the City of New York. In the event of a conflict between said Rules and a provision of this Invitation for Bids, the Rules shall take precedence.

### SECTION 32. PROMPT PAYMENT

- A. 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 a contract resulting from this solicitation. The provisions require the payment to contractors of interest on payments made after the required payment date except as set forth

in subdivisions c(3) and d(2),(3),(4) and (5) of Section 4-06 of the Rules.

- B. 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.
- C. Determinations of interest due will be made in accordance with the provisions of Section 4-06 of the Procurement Policy Board Rules and General Law Section 3-a.

**SECTION 33. SUBMISSION OF REQUIRED DOCUMENTATION**

- 1 The following forms, all of which are contained in the Bid Book, shall be completed and submitted with the Bid:
  - a. Bid form;
  - b. Bid security (if required, see page I);
  - c. Schedule B – Subcontractor Utilization Plan (if included in this Bid Book);
  - d. Vendor Information Sheet;
  - e. Tax Affirmation.
- 2 Notwithstanding any of the above, the list of forms enumerated in this Section 33 is not an all-inclusive list of the forms required to be submitted with the bid. The solicitation package, an addendum, or a City, State, or Federal law or regulation may require the bidder to submit additional forms with the bid. Failure to provide any other documentation required under this solicitation at the time of bid submission and/or as a pre-requisite to award may result in the bidder being deemed non-responsive by HRA.
- 3 In the event that you are determined by the Department to be the lowest responsible bidder, as provided in this solicitation, within ten (10) days of notification thereof you must supply all documentation or information required pursuant to the solicitation including confirmation of required insurance coverages set forth on pages 12-14 (Schedule of Insurance, Liquidated Damages and Bonds) in such form as may be satisfactory to the Department.
- 4 FAILURE TO COMPLY WITH THE PROVISIONS OF THE NOTICE SHALL CONSTITUTE GROUNDS FOR REJECTION OF YOUR BID.

**SECTION 34: SCHEDULE OF INSURANCE, LIQUIDATED DAMAGES, AND BONDS**

E-PIN: 09620B0002  
PIN #: 19BPESR01801

**TYPES OF INSURANCE, MINIMUM LIMITS AND SPECIAL CONDITIONS**

**Note: All certificate(s) of insurance submitted pursuant to Article 7 of Appendix A must be accompanied by a Certification of Insurance Broker or Agent consistent with the form at the end of this schedule and include the following information:**

- For each insurance policy, the name and NAIC number of issuing company, number of policy, and effective dates;
- Policy limits consistent with the requirements listed below; and
- Additional insureds consistent with the requirements listed below.

All such certificate(s) of insurance (including Certification(s) of Insurance Broker or Agent, where required) must be sent to the New York City Human Resources Administration, Agency Chief Contracting Officer, ATTN: Contract Management Office (INSURANCE), 150 Greenwich Street, New York, New York 10007.

Insurance indicated by a blackened box (■) or by X in a □ to left will be required under this contract

Types of Insurance (per Article 6 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
<input checked="" type="checkbox"/> Commercial General Liability      Art. 7.03	\$1,000,000.00__ per occurrence  \$1,000,000 personal & advertising injury (unless waived in writing by the Department)  \$2,000,000 aggregate  Additional Insureds: 1. City of New York, including its officials and employees, with coverage at least as broad as ISO Forms CG 20 10, and  2. <i>[If appropriate, insert names of other entities to be covered as Additional Insureds.]</i>
<input type="checkbox"/> Professional Liability Insurance      Art. 7.03	\$_____ per occurrence/claim  \$_____ aggregate
<input checked="" type="checkbox"/> Workers' Compensation      Art. 7.02 <input checked="" type="checkbox"/> Disability Benefits Insurance      Art. 7.02 <input checked="" type="checkbox"/> Employers' Liability      Art. 7.02	Workers' Compensation, Employers' Liability, and Disability Benefits Insurance: Statutory per New York State law without regard to jurisdiction.  <b>Note:</b> New York State Workers' Compensation Board form no. C-105.2 and DB 120.1, State Insurance Fund form no. U-26.3, and Request for

		WC/DB Exemption form no. CE-200 are acceptable. The City will not accept an ACORD form as proof of Workers' Compensation Insurance.
<input checked="" type="checkbox"/> Commercial Auto Liability	Art. 7.03	\$__ \$1,000,000.00_ per accident combined single limit  If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90
<input type="checkbox"/> [OTHER] _____	Art. 7. _____	<i>[If other type(s) of insurance need to be required under the Contract, (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s). Add a provision to Article 6 of the supply and service contract stating the type and amount of insurance required.]</i>
<input type="checkbox"/> [OTHER] _____	Art. 7. _____	<i>[See directly above.]</i>
<input type="checkbox"/> Liquidated Damages		<i>See Specification, _____</i>
<input type="checkbox"/> Bonds _____	Part I, Section 27	_____% <i>[Bonding requirements for non-construction contracts are not allowed without MOCS' approval. If a bond is required, specify the percentage of the contract price and the type required (bid bond/bid deposit, performance bond, or payment bond).]</i>

**PART II. BID DOCUMENTS**

**A. APPLICATION FOR QUALIFICATION**

**NOTE TO BIDDERS:** Answer all questions. Failure to complete this section in detail may result in the rejection of your bid.

- 1. a) Name of Bidder \_\_\_\_\_
- b) Bidder is Individual ( ) Partnership ( )  
Corporation ( ) Association ( )  
Joint Venture ( ) Other ( )

2. Address \_\_\_\_\_

a) Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_  
Zip Code \_\_\_\_\_ Telephone# \_\_\_\_\_ Fax# \_\_\_\_\_

b) Billing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_  
Zip Code \_\_\_\_\_ Telephone Number \_\_\_\_\_

3. How long have you been in business? \_\_\_\_\_

4. State the general nature of the services you desire to bid upon: \_\_\_\_\_

5. How long at present address? \_\_\_\_\_

6. If incorporated, state date of incorporation \_\_\_\_\_  
\_\_\_\_\_ State \_\_\_\_\_

(If not a domestic corporation, attach a copy of the Certificate of Authority by the Secretary of State of New York pursuant to the General Corporation Law).

7. List below names and addresses of all officers of the Corporation.

<u>NAME</u>	<u>HOME ADDRESS</u>	<u>TITLE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Are you a partnership? \_\_\_\_\_

If so, list names and addresses of all partners and their interest:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. If you are doing business under a trade name, give state and county in which certificate is filed.  
\_\_\_\_\_ State \_\_\_\_\_ County

(If certificate is filed outside New York City, attach a certified copy of the certificate).

10. Number of employees \_\_\_\_\_

11. Do you share working premises with any other firm or firms? \_\_\_\_\_  
If so, give the name of the other firm or firms. \_\_\_\_\_

12. Do you own and operate a warehouse? \_\_\_\_\_ If answer is  
Yes, give address and number of years at this address?

Address	Years
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13. Have you ever bid on City of New York Business under another name? \_\_\_\_\_  
If the answer is yes, list below the name or  
names: \_\_\_\_\_

14. Have you any outstanding bids for contracts with the City of  
New York? If the answer is yes, please list them \_\_\_\_\_

15. Have you any current contract awards from the City? \_\_\_\_\_  
If the answer is yes, please list them including the amount of the award.

16. Give names and addresses of three of your largest customers including Federal, or any State of City Government, or quasi-public corporation.

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1. Name and address of Company or Agency

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Name and Title of Contact Person

Telephone No. \_\_\_\_\_ FAX \_\_\_\_\_

Scope of Work \_\_\_\_\_

Address or location where services were performed

Amount of contract \$ \_\_\_\_\_

Dates services were performed \_\_\_\_\_

Address or location where services were performed

2. Name and address of Company or Agency

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Name and Title of Contact Person

Telephone No. \_\_\_\_\_ FAX \_\_\_\_\_

Scope of Work \_\_\_\_\_

Address or location where services were performed

Amount of contract \$ \_\_\_\_\_

Dates services were performed \_\_\_\_\_

Address or location where services were performed

3. Name and address of Company or Agency

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Name and Title of Contact Person

Telephone No. \_\_\_\_\_ FAX \_\_\_\_\_

Scope of Work \_\_\_\_\_

Address or location where services were performed

Amount of contract \$ \_\_\_\_\_

Dates services were performed \_\_\_\_\_

Address or location where services were performed

17. Bank references.

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18. Federal I.D. Number \_\_\_\_\_

(If Bidder is an individual and has no Federal I.D. Number, then state Bidder's Social Security number).

19. Financial Condition. The Bidder shall furnish all books of account, records, vouchers, statements or other information that may be required by the Agency concerning the bidder's financial status in order for the Agency to ascertain the bidder's responsibility and capability to perform the contract.

B. Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing

THE FOLLOWING SHALL APPLY TO CONTRACTS IN AN AMOUNT IN EXCESS OF \$250,000.00 AND/OR A CONTRACTOR WHOSE AGGREGATE BUSINESS WITH THE CITY IN THE PRECEDING 12 MONTHS INCLUDING THIS CONTRACT TOTALS \$250,000.00 OR MORE:

1. The Bidder shall complete the online disclosure process required by New York City Admin. Code § 6-116.2 and PPB Rule § 2.08, in their entirety, and submit them through PASSPort prior to the date of bid opening.
2. The bidder or Contractor shall obtain complete disclosures from each subcontractor it proposes to use and shall attach such applications to the list of subcontractors it submits to the Commissioner for his approval.
3. All changes in officers, directors of corporation or members of firms or partnerships made

after the initial submission of the bidder's, contractor's, or subcontractor's disclosures shall be immediately filed with the Department in the form of a sworn statement.

4. Non-compliance with any of the foregoing provisions may result in non-acceptance of a bid, disqualification of the bidder, disapproval of a submitted subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after its award.

**C. BID**

**NOTE TO BIDDERS: FAILURE TO COMPLETE THIS SECTION IN DETAIL WILL RESULT IN REJECTION OF YOUR BID.**

1. THE UNDERSIGNED agrees, if this bid is accepted, that it will, within 10 days after receipt of notice of award, furnish such performance bond, payment bond and executed copies of insurance policies as may be required, execute the Agreement set forth in Part III of this Proposal for Bid and will proceed, when directed to do so, with the work required hereunder in strict compliance with the terms and conditions set forth in this Proposal for Bid AT THE FOLLOWING BID PRICE:

THIS CONTRACT IS BASED UPON THE UNIT BID PRICE. THE ESTIMATED CONTRACT COST IS BASED UPON ESTIMATED UNITS OF SERVICE, QUANTITY, OR VOLUME. IT IS THE INTENT OF THIS CONTRACT THAT THE CONTRACTOR SHALL BE PAID FOR ACTUAL UNITS OF SERVICE, QUANTITY, OR VOLUME FURNISHED FOR THE STATED PERIOD OF PERFORMANCE, BASED UPON THE UNIT BID PRICE.

ASSISTANT TO THE COMPTROLLER

Thomas C. Nodell, Chief

Division of Labor Law

Office of the Comptroller

PERIOD: \_\_\_\_\_ To \_\_\_\_\_

CLASSIFICATION      RATE PER HOUR      SUPPLEMENTAL BENEFITS |

(Statement of work and period of performance):

**E-PIN #: 09620B0002**  
**PIN #: 19BPESR01801**

**SCOPE: PRE-EMPLOYMENT MEDICAL EXAMINATION FOR PEACE OFFICERS CITYWIDE**  
**PERIOD OF PERFORMANCE: THIRTY-SIX (36) MONTHS FROM DATE OF REGISTRATION,**  
**WITH THE OPTION TO RENEW FOR AN ADDITIONAL TWO-YEAR TERM**

**TOTAL CONTRACT BID: \$ \_\_\_\_\_ (ENTER FROM PAGE 20B)**

(TOTAL CONTRACT BID IN WORDS)

\_\_\_\_\_ DOLLARS

NOTE: In case of discrepancy between the amount in figures and the amount in words the lesser amount will apply.

- 2. THE UNDERSIGNED, in submitting this bid, expressly states and represents as set forth in Section C of this Part II;
- 3. THE UNDERSIGNED hereby certifies to the truth and accuracy of all figures and answers contained in the Application for Qualification (Section A hereof), and authorizes the Department to make any necessary examination of the books of account, records and vouchers of the Bidder or other investigation to determine its responsibility.

BIDDER (Print) \_\_\_\_\_

BY \_\_\_\_\_  
(Signature of Person Authorized to sign this bid)

\_\_\_\_\_  
[Type name and title (if any)]

Attest:

(Corporate Seal)

\_\_\_\_\_  
(Secretary of Corporate Bidder) |

**CONTRACT FOR THE PROVISION OF PRE-EMPLOYMENT MEDICAL EXAMINATIONS FOR SPECIAL OFFICER CANDIDATES FOR THE DEPARTMENT OF SOCIAL SERVICES (DSS), THE HUMAN RESOURCES ADMINISTRATION (HRA), AND THE DEPARTMENT OF HOMELESS SERVICES (DHS).**

**BID PAGE**

A COMPLETE MEDICAL IS DEFINED AS THE PROCEDURE NECESSARY TO MEET THE STANDARDS AND SPECIFIC CONDITIONS AS NOTED IN THE "SCOPE OF WORK". Inclusive in a medical are Personal and Family Health History; Complete Physical Examination by a Physician; Eye Test for Near, Far, and Color Vision; Audiometric Screening; Urinalysis; PPD; Complete Blood Analysis and Microscope Urinalysis; Hair Max Panel Testing and 12 panel tests with Chain of Custody Documentation.

**The estimated number of Medical Examinations for three years is for bidding purposes only and may vary in actuality.** Award shall be made to the lowest responsive and responsible bidder for item "A". Item B, C & E prices shall be market prices. If inflated, the bid will be rejected as non-responsive. The cost of the complete medical exam shall include all costs associated with the complete medical and drug screen. The final bid price should also contain the costs associated with defending an appeal of a physical examination or drug test by a candidate before an administrative hearing in item D.

(A)

**COMPLETE MEDICAL (excluding the 12 panel pre-employment drug screen)**

$$\begin{array}{ccccccc} \underline{900} & & \times & & \$ & \underline{\hspace{2cm}} & = & & \$ & \underline{\hspace{2cm}} \\ \text{Est. \# of Medicals} & & & & & \text{Cost per exam} & & & & \text{Total} \end{array}$$

(B)

**Automatically perform 12-panel drug screen exam. The cost of this exam should be included with the medical exam. (To be administered on all pre-employment exam).**

$$\begin{array}{ccc} \underline{900} & \$ \underline{\hspace{2cm}} & \$ \underline{\hspace{2cm}} \\ \text{Est. \# of exam} & \text{Cost per exam} & \text{Total} \end{array}$$

(C)

**Perform 12 panel tests for cause of reasonable suspicion – for drug listed in section 9(d) within "Scope of Work."**

$$\begin{array}{ccc} \underline{100} & \$ \underline{\hspace{2cm}} & \$ \underline{\hspace{2cm}} \\ \text{Est. \# of exam} & \text{Cost per exam} & \text{Total} \end{array}$$

(D) **Appeal of negative determination of Complete Medical or drug test**

$$\begin{array}{ccccccc} \underline{120} & & \times & & \$ & \underline{\hspace{2cm}} & & & \$ & \underline{\hspace{2cm}} \\ \text{Est. \# of appeals} & & & & & \text{Cost per appeal} & & & & \text{Total cost of appeals} \end{array}$$

(E)

THE EXAMS BELOW REQUIRE PRIOR APPROVAL BY NYC DEPARTMENT OF HOMELESS SERVICES (DHS) BEFORE BEING ADMINISTERED. **The costs of the exams below not included with the medical exam and are not to be included in an invoice unless required and prior approval is obtained from DHS to administer them.**

**1) Electro Cardiogram (EKG)**

60 Est. # of exams      \$ \_\_\_\_\_ Cost per exam      \$ \_\_\_\_\_ Total

**2) X-Ray with Positive PPD**

60 Est. # of exams      \$ \_\_\_\_\_ Cost per exam      \$ \_\_\_\_\_ Total

**3) EKG + X-Ray with Positive PPD total**

\$ \_\_\_\_\_ Total

**Total bid price: A + B + C + D+ E(3) = \$**  
\_\_\_\_\_

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

Company EIN: \_\_\_\_\_ Telephone # \_\_\_\_\_

Contact Person: \_\_\_\_\_



NOTE: The following Affidavit must be made by the person signing the bid and must be subscribed and sworn to before a Notary Public or Commissioner of Deeds.

**D. STATEMENTS AND REPRESENTATIONS OF BIDDER**

THE BIDDER MAKES THE FOLLOWING STATEMENTS AND REPRESENTATIONS AS PART OF THIS BID AND SHALL EXECUTE AN AFFIRMATION WHICH APPEARS ON PAGE 21 OF THIS BID PACKAGE:

1. That the Bidder, if an individual, is of lawful age. That the Bidder is the only one interested in this bid; and that no person, firm or organization other than hereinabove named has any interest in this bid, or in the contract proposed to be taken.
2. That the Bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:
  - (a) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such process with any other bidder or with any competitor:
  - (b) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to bid 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 Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition:
  - (d) That no councilperson or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.
  - (e) That said Bidder is not in arrears to the City of New York upon any debt, contract or taxes, and is not a defaulter, as surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Bidder to receive public contracts except as otherwise stated in the affirmation. The Bidder shall file with the bid, said affirmation that it has paid all applicable City income, excise and other taxes for all years it has conducted business activities in New York City, and indicate on its bid, its Tax Identification Number.
3. That the said Bidder has inspected the site where the services are to be performed and is satisfied as to all general and local conditions that may affect the cost of performance of the contract.
4. That the Bidder has examined all parts of this Proposal for Bid, including but not limited to the Agreement and the terms and conditions thereof; and if the bid is accepted as submitted, the Bidder shall execute the Agreement as set forth herein.

The Bidder executes this document expressly warranting and representing that the Bidder will provide all bonds, insurance and other required documents and all the information with respect to its financial condition as may be pertinent and the Agency may deem reasonably necessary to determine the qualifications of the Bidder.

5. That the Bidder certifies that it is duly licensed to do business in the City and State of New York and holds or agrees to obtain all necessary permits required by law or regulation for the performance of the contract.
6. The Bidder, executes this document expressly warranting and representing that should this bid be accepted by the City and the contract awarded to it, the Bidder and its sub-contractors engaged in the performance of the contract: (1) will comply with the provisions of Section 6-109 of the Administrative Code of the City of New York in relation to minimum wages and other stipulations and the rules and regulations of the Procurement Policy Board adopted pursuant thereto as more expressly and in detail set forth in the contract form.

In the event of breach or violation of any of the foregoing, the Bidder may be subject to damages, liquidated or otherwise, cancellation of the contract and suspension as a bidder for a period of three (3) years.

7. The Bidder, (1) represents that its attention has been specifically drawn to the Equal Employment Provisions of the Contract Agreement, and (2) warrants that it will comply with all the terms and provisions prescribed therein.
8. The Bidder executes this document expressly warranting and representing that should this bid be accepted and the contract awarded to the Bidder, the Bidder and its sub-contractors engaged in the performance (1) will comply with the provisions of Section 6-108 of the Administrative Code of the City of New York and the non-discrimination provisions of Sections 220 and 230 of the New York Labor Law as more expressly and in detail set forth in the contract form: and (2) will post notices to be furnished by the City, setting forth the requirements of the aforesaid law in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of the contract can readily view it, and will continue to keep such notices posted until the supplies, materials and equipment, or work, labor and services required by the Contractor have been finally accepted by the City.

AFFIDAVIT WHERE BIDDER IS A CORPORATION

State of New York, County of \_\_\_\_\_, ss:

\_\_\_\_\_ being duly sworn, says, I am the  
\_\_\_\_\_ of the above named corporation whose name is  
subscribed to and which executed the foregoing bid. I reside at  
\_\_\_\_\_. I have knowledge of the several  
matters therein stated, and they are in all respects true.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC

AFFIDAVIT WHERE BIDDER IS A PARTNERSHIP

State of New York, County of \_\_\_\_\_, ss:

\_\_\_\_\_ being duly sworn, says, I am a member of  
\_\_\_\_\_ the firm described in and which executed the foregoing bid, I  
subscribed the name of the firm thereto on behalf of the firm, and the several matters therein stated  
are in all respects true.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_

\_\_\_\_\_  
NOTARY PUBLIC

AFFIDAVIT WHERE BIDDER IS AN INDIVIDUAL

State of New York, County of \_\_\_\_\_, ss:

\_\_\_\_\_ being duly sworn, says, I am the individual who executed the foregoing bid. I have knowledge of the several matters therein stated, and they are in all respects true.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_

\_\_\_\_\_  
NOTARY PUBLIC

### PART III. AGREEMENT

THIS AGREEMENT, made and entered into [this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between the City of New York acting through the Human Resources Administration/Department of Social Services (“Department”) located at 150 Greenwich Street, New York, New York 10007 and \_\_\_\_\_ "Contractor") located at \_\_\_\_\_.]

#### ARTICLE 1. DEFINITIONS; COMPONENTS OF AGREEMENT

1.1 The definitions set forth in Article 1 of Appendix A apply herein.

1.2. The term “Contract” or “Agreement” includes the following components except for such portions thereof as may be specifically excluded and except for titles, sub-titles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience):

1. The advertisement and Proposal for Bids;
2. The Bid;
3. The instant Agreement (including Appendix A);
4. Budget Director's Certificate;
5. The Specifications;
6. The Contract Drawings;
7. All addenda issued by the Commissioner prior to the receipt of all bids;
8. All provisions required by law to be inserted in this contract whether actually inserted or not; and
9. The notice of award.

#### ARTICLE 2. SCOPE OF SERVICES

The Contractor agrees to perform all the services described in the Specifications attached hereto as Part IV of the Proposal for Bid.

#### ARTICLE 3. PERIOD OF PERFORMANCE

The period of performance of this Agreement shall be **thirty-six (36) months from the date of registration, with the option to renew for one (1) additional two-year term.**

#### ARTICLE 4. PAYMENT

4.1. The City agrees to pay and the Contractor agrees to accept, as full payment for the complete and satisfactory performance of the services required herein, an amount not to exceed

§ \_\_\_\_\_, such amount being based upon the Contractor's Bid for the work or services required as set forth in Part II (BID) of the Proposal for Bid, and in the case where such bid is a unit price, upon the quantity, volume, amount or period of work or services or materials estimated by the Department to be required multiplied by such unit Bid Price. Any such estimated quantity, volume, amount or period of work or services or materials is an estimate based upon experience. The Department shall neither be required to order any quantity or amount or period thereof, nor shall it be limited by any such estimate, but the quantity or amount or period ordered and paid for shall be that which is actually required by the Department and provided by the Contractor.

- 4.2 The Contractor shall submit numbered invoices for payment on a monthly basis, unless otherwise agreed. Such invoices shall set forth the services for which payment is requested, and approval thereof by the Department shall be a pre-requisite to payment. All payments shall be subject to such provisions for set-off as may be set forth in this Agreement and in the Specifications attached hereto.

#### ARTICLE 5. PRICING

- 5.1 The Contractor shall, whenever required during the Agreement, including but not limited to the time of bidding, submit cost or pricing data and formally certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a specified date. The Contractor shall be required to keep its submission of cost and pricing data current until the contract has been completed.
- 5.2 The price of any change order, or contract modification subject to the conditions of Article 5.1, shall be adjusted to exclude any significant sums by which the City finds that such price was based on cost or price data furnished by the vendor which was inaccurate, incomplete, or not current as of the date agreed upon between the parties.
- 5.3 Time for Certification. The Contractor must certify that the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date.
- 5.4 Refusal to Submit Data. When any Contractor refuses to submit the required data to support a price, the Contracting Officer shall not allow the price.
- 5.5 Certificate of Current Cost or Pricing Data: Form of Certificate. In those cases when cost or pricing data is required, a certification shall be made in accordance with Section 2-06 of the PPB rules and such certification shall be retained in the agency contract file.

#### ARTICLE 6

The Contractor agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.



**APPENDIX A**

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR  
CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN, AND CLIENT SERVICES**

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## ARTICLE 1 - DEFINITIONS

### Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. “Agency Chief Contracting Officer” or “ACCO” means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. “Agreement” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” means the City of New York.

D. “City Chief Procurement Officer” or “CCPO” means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” means the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

F. “Comptroller” means the Comptroller of the City of New York.

G. “Contractor” means the entity entering into this Agreement with the City.

H. “Days” means calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

J. “Law” or “Laws” means the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.

L. “PPB Rules” means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 *et seq.*

M. “SBS” means the New York City Department of Small Business Services.

N. “State” means the State of New York.

## **ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES**

### **Section 2.01 Procurement of Agreement**

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

### **Section 2.02 Conflicts of Interest**

A. 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 conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City,

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 other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

### **Section 2.03 Certification Relating to Fair Practices**

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in this Agreement that have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

#### **Section 2.04 Disclosures Relating to Vendor Responsibility**

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor's Office of Contract Services. The Contractor acknowledges that the Department's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

#### **Section 2.05 Disclosure Relating to Bankruptcy and Reorganization**

If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven days of filing.

#### **Section 2.06 Authority to Execute Agreement**

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

### **ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING**

#### **Section 3.01 Assignment**

A. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or the right to execute it, or the right, title, or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance, or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final

determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section 3.01 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.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

### **Section 3.02 Subcontracting**

A. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is \$20,000 or less.* The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal ([www.nyc.gov/pip](http://www.nyc.gov/pip)).

2. *Approval when subcontract is greater than \$20,000.*

The Contractor shall not enter into any subcontract for an amount greater than \$20,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than \$20,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal

([www.nyc.gov/pip](http://www.nyc.gov/pip)) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.<sup>1</sup>

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed \$25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the Agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the Agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

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<sup>1</sup> Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at [pip@fisa.nyc.gov](mailto:pip@fisa.nyc.gov).

4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

C. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

D. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

F. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

## **ARTICLE 4 - LABOR PROVISIONS**

### **Section 4.01 Independent Contractor Status**

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship

or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

#### **Section 4.02 Employees and Subcontractors**

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

#### **Section 4.03 Removal of Individuals Performing Work**

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

#### **Section 4.04 Minimum Wage; Living Wage**

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, 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 of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 (“Section 6-109”), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).

4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as

appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

#### **Section 4.05 Non-Discrimination in Employment**

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

B. N.Y. Labor Law § 220-e. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by N.Y. Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement 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, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 for each person for each calendar day during which

such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be 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 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

C. Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by Admin. Code § 6-108, that:

1. 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.

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) 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.

Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

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 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

1. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY §§ 10-01 *et seq.* No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

a. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital

status, sexual orientation or citizenship status 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;

b. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

c. 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, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

d. 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;

e. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and

f. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

2. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

a. Disapproval of the Contractor; and/or

b. Suspension or termination of the Agreement; and/or

c. Declaring the Contractor in default; and/or

d. In lieu of any of the foregoing sanctions, imposition of an employment program.

3. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules 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 DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof 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. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

## **Section 4.06 Paid Sick Leave Law**

### *A. Introduction and General Provisions.*

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York

City to be provided with paid sick time.<sup>2</sup> Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

3. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

5. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

*B. Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLL ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

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<sup>2</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

3. An employee entitled to sick time pursuant to the PSSL may use sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency; or

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSSL must be treated by the employer as confidential.

5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing

those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the PSLL does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;

3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;

5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;

6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSSL.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

F. *Records.* An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

#### **Section 4.07 Whistleblower Protection Expansion Act**

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

4. For the purposes of this Section 4.07, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Section 4.07 is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

## **ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS**

### **Section 5.01 Books and Records**

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

### **Section 5.02 Retention of Records**

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions,

or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

### **Section 5.03 Inspection**

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession’s services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

### **Section 5.04 Audit**

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department’s Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources, or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

### **Section 5.05 No Removal of Records from Premises**

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

### **Section 5.06 Electronic Records**

As used in this Appendix A, the terms "books," "records," "documents," and "other evidence" refer to electronic versions as well as hard copy versions.

### **Section 5.07 Investigations Clause**

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the 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.

B.

1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority

empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or 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, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C.

6. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

7. 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 E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. The disqualification for a period not to exceed five 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

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the

hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. 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 (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. 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.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. 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 Paragraph D 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 Paragraph (C)(1) 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.

F. Definitions

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with

another person or entity as a partner, director, officer, principal or employee.

3. The term “entity” as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

4. The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. 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 the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

### **Section 5.08 Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the Department within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other

personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

## **ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST**

### **Section 6.01 Copyrights and Ownership of Work Product**

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce,

publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

### **Section 6.02 Patents and Inventions**

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a 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.

### **Section 6.03 Pre-existing Rights**

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

### **Section 6.04 Antitrust**

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 antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

## **ARTICLE 7 - INSURANCE**

### **Section 7.01 Agreement to Insure**

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

### **Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance**

A. The Contractor shall maintain workers' compensation insurance, employers' liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor's workers' compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers' Compensation Insurance*;
  2. Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
  3. Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
  4. Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
  5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
  6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
  7. Form CE-200 – *Affidavit of Exemption*;
  8. Other forms approved by the New York State Workers' Compensation Board;
- or
9. Other proof of insurance in a form acceptable to the City.

### **Section 7.03 Other Insurance**

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims-

made.” Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. *Professional Liability Insurance.*

1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

#### **Section 7.04 General Requirements for Insurance Coverage and Policies**

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

B. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

### **Section 7.05 Proof of Insurance**

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

## **Section 7.06 Miscellaneous**

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list the City, including its officials and employees, and any other entity listed as an additional insured on

Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

## **ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

### **Section 8.01 Reasonable Precautions**

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

### **Section 8.02 Protection of City Property**

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, where such loss or damage is caused by negligence, any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

### **Section 8.03 Indemnification**

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

### **Section 8.04 Infringement Indemnification**

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or

Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

#### **Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation**

The Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

#### **Section 8.06 Actions By or Against Third Parties**

A. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance that the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

#### **Section 8.07 Withholding of Payments**

A. If any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. If any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

### **Section 8.08 No Third Party Rights**

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officials and employees.

## **ARTICLE 9 - CONTRACT CHANGES**

### **Section 9.01 Contract Changes**

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

### **Section 9.02 Changes Through Fault of Contractor**

If any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

## **ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES**

### **Section 10.01 Termination by the City Without Cause**

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of

termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

### **Section 10.02 Reductions in Federal, State, and/or City Funding**

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

### **Section 10.03 Contractor Default**

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 *et seq.*, or the Mail Fraud Act, 18 U.S.C. §§ 1341 *et seq.*, for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

#### **Section 10.04 Force Majeure**

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

F. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to 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 the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

#### **Section 10.05 Procedures for Termination**

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within 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, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

#### **Section 10.06 Miscellaneous Provisions**

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

### **Section 10.07 Liquidated Damages**

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

## **ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

### **Section 11.01 Prompt Payment**

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

### **Section 11.02 Electronic Funds Transfer**

A. In accordance with Admin. Code § 6-107.1, 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, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the 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 of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 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 best interest of the City.

C. This Section 11.02 is applicable to contracts valued at \$25,000.00 and above.

## **ARTICLE 12 - CLAIMS**

### **Section 12.01 Choice of Law**

This Agreement shall be deemed to be executed in the City and 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 (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

### **Section 12.02 Jurisdiction and Venue**

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

### **Section 12.03 Resolution of Disputes**

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 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, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 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 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor 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 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 Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, 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 Contractor to produce any requested material whose relevancy

the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, 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 contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

3. Agency Head Determination. Within 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 Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. 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 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. Time, Form, and Content of Notice. Within 30 Days of receipt of a decision by the Agency Head, the Contractor 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 Contractor 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 Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within 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.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. 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 Contractor. Willful failure of the Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller's receipt of all the materials. The Contractor 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 Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as

chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 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;

2. the City Chief Procurement Officer ("CCPO") or his or 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

3. 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.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor 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 Contractor 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 Contractor 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 Contractor to, the Comptroller's Office. The Contractor 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 Contractor 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.

2. Agency Response. Within 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor 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 Contractor. 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 30 Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor 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 Contractor 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.

4. CDRB Determination. Within 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 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 this Agreement. 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.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB's decision.

6. 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 PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

#### **Section 12.04 Claims and Actions**

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

#### **Section 12.05 No Claim Against Officials, Agents, or Employees**

No claim shall be made by the Contractor against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

#### **Section 12.06 General Release**

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

#### **Section 12.07 No Waiver**

Waiver by either the Department or the Contractor 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 parties as set forth in Section 9.01.

### **ARTICLE 13 - APPLICABLE LAWS**

#### **Section 13.01 PPB Rules**

This Agreement is subject to the PPB Rules. If there is a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

### **Section 13.02 All Legal Provisions Deemed Included**

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

### **Section 13.03 Severability / Unlawful Provisions Deemed Stricken**

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 of this Agreement, the unlawful provision 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.

### **Section 13.04 Compliance With Laws**

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

### **Section 13.05 Unlawful Discrimination in the Provision of Services**

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level

subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

### **Section 13.05 Americans with Disabilities Act (ADA)**

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). If the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

### **Section 13.06 Voter Registration**

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department

of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. *Distribution of Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section 13.06, the word “Contractor” shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. *Assistance in Completing Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. *Required Statements.* In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor’s or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

- a. seek to influence an applicant's political preference or party designation;
- b. display any political preference or party allegiance;
- c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
- d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.
- e. register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

### **Section 13.07 Political Activity**

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

### **Section 13.08 Religious Activity**

There shall be no religious worship, instruction, or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

### **Section 13.09 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 federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 *et seq.*, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of 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 or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

### **Section 13.10 MacBride Principles**

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) 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.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

### **Section 13.11 Access to Public Health Insurance Coverage Information**

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and

Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter § 1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

### **Section 13.12 Distribution of Personal Identification Materials**

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

## **ARTICLE 14 - MISCELLANEOUS PROVISIONS**

### **Section 14.01 Conditions Precedent**

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

### **Section 14.02 Merger**

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

### **Section 14.03 Headings**

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

### **Section 14.04 Notice**

A. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) 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. Either party may change its notice address 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 below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by email and, unless receipt of the e-mail is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

Nothing in this Section 14.04 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 New York Civil Practice Law and Rules.

**AFFIRMATION**

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon 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 proposer or bidder to receive public contract except \_\_\_\_\_.

Full name of Proposer or Bidder *[below]*

\_\_\_\_\_

Address \_\_\_\_\_

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

**CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:**

A - Individual or Sole Proprietorships

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 or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer'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 seeking City contracts.

## **CERTIFICATES OF INSURANCE**

### Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.



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ACKNOWLEDGEMENT (DEPARTMENT)

STATE OF NEW YORK )

:ss:

COUNTY OF NEW YORK )

On the \_\_\_ day of \_\_\_\_\_ 20 \_\_, before me personally came \_\_\_\_\_, to me known and known to me to be \_\_\_\_\_ of the HUMAN RESOURCES ADMINISTRATION/DEPARTMENT OF SOCIAL SERVICES of the CITY OF NEW YORK, the person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same for the purpose therein mentioned.

\_\_\_\_\_  
NOTARY PUBLIC

ACKNOWLEDGEMENT (CORPORATION)

STATE OF \_\_\_\_\_ )

:ss:

COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_ 20 \_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_, that he is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

\_\_\_\_\_  
NOTARY PUBLIC

ACKNOWLEDGEMENT (INDIVIDUAL)

STATE OF \_\_\_\_\_ )  
:ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, before me personally came \_\_\_\_\_, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

ACKNOWLEDGEMENT (PARTNERSHIP)

STATE OF \_\_\_\_\_ )  
:ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be one of the members of the firm of \_\_\_\_\_, and described in and who executed the foregoing instrument and acknowledged to me that he executed the same as the act and deed of said firm.

\_\_\_\_\_  
NOTARY PUBLIC

AUTHORITY

MAYOR'S CERTIFICATE NO. CBX \_\_\_\_\_ DATED \_\_\_\_\_  
BUDGET DIRECTOR'S CERTIFICATE NO. C- \_\_\_\_\_ DATED \_\_\_\_\_

ADMINISTRATOR'S CERTIFICATE

I hereby certify the following:

That the specifications contained herein comply with the terms and conditions of the BUDGET; and

In conformity with the provisions of Section 6-101 of the Administrative Code of the City of New York, it is hereby certified that the estimated cost of the work, materials and supplies required by the within contract, amounting to

\_\_\_\_\_ (\$ \_\_\_\_\_) Dollars

is chargeable to the fund of the Human Resources Administration, entitled: Code

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Agency Chief Contracting Officer, **Office of Contracts**  
Human Resources Administration

COMPTROLLER'S CERTIFICATE

The City of New York, \_\_\_\_\_ 20\_\_\_\_\_

In pursuance of the provisions of Section 6-101 of the Administrative Code of the City of New York, I hereby certify that there remains unapplied and unexpended a balance of the above mentioned fund applicable to this contract sufficient to pay the estimated expense of executing the same, viz:

\$ \_\_\_\_\_

\_\_\_\_\_  
Comptroller  
|

**PART IV. CONTRACT SPECIFICATIONS**

**Contract Specifications**

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## **COMPETITIVE SEALED BID**

### **SPECIFICATIONS FOR MEDICAL TESTING FOR PEACE OFFICERS**

#### **SECTION 1: OVERVIEW**

In order to acquire and maintain active employment status, candidates for the title of Special Officer in the Department of Social Services (DSS), the Human Resources Administration (HRA), and the Department of Homeless Services (DHS), (hereinafter collectively referred to as the “Agency”), are mandated by the State of New York Section 50 of the New York Civil Service Law to obtain a pre-employment medical exam so the Agency can ascertain his/her suitability prior to employment and training. Therefore, the Agency intends to enter into a contract with a licensed medical practitioner to provide pre-employment medical examinations, as needed, to potential Special Officers.

#### **SECTION 2: TERM OF CONTRACT AND MAXIMUM AMOUNT**

- A. The term of this Contract is thirty-six (36) months from the date the Contract is registered with the New York City Comptroller’s Office, unless terminated sooner pursuant to the terms stated herein.
- B. The Department, in its sole discretion, shall have the right and option to renew this Contract for one (1) additional two-year term. The renewal shall be on the same terms and conditions as those contained in the initial Contract. The Department shall exercise its option by notifying the Contractor of its intent to renew prior to the expiration of the term of this Contract. The exercise of such option by the Department shall be subject to all required approvals, the NYC Procurement Policy Board Rules, and the appropriation of funds for the renewal period.

#### **SECTION 3: BIDDER QUALIFICATIONS**

- A. Upon request, bidders must provide all information necessary for a determination of responsiveness and responsibility, as set forth in the New York City Procurement Policy Board Rules (“PPB Rules”).
- B. In order to qualify for the Contract award, and upon the request of the Agency, the apparent low bidder at the time of the Bid opening shall demonstrate to the Agency its capacity to successfully complete the services as described in these specifications and to meet the qualification requirements herein. The award of the Contract shall be contingent on Contractor’s ability to demonstrate, to the satisfaction of the Agency, that Contractor

has liquid assets and/or established lines of credit with recognized financial institutions to cover three (3) months of payroll and operating costs for all contracts held by the firm. Bidders must demonstrate their financial solvency at time of bid submission.

C. The selected Contractor must possess and maintain all licenses, certifications and insurance necessary to perform the services required under this Contract. The selected Contractor shall submit copies of all required licenses, certifications and Certificates of Insurance with its Bid. Verification of all such documentation is required prior to Contract award. Certificates of Insurance must clearly state that they are in effect throughout the term of this Contract.

D. Additional Qualifications

- 1) Must be a licensed physician authorized to practice within the State of New York.
- 2) The bidder must have a minimum of four (4) years of experience successfully providing services of a similar nature, size and scope.
- 3) All certifications and licenses required under this contract are subject to Agency review.
- 4) Each bidder should submit all requested information/documentation, including proof of all required licenses, registrations or certifications, when submitting its bid response, unless otherwise specified.
- 5) Business facility or office should be located within the borough of Manhattan.

#### **SECTION 4: CONTRACT MONITORING/PERFORMANCE STANDARDS**

The Agency Administrator will oversee and/or personally track the following administrative aspects of this agreement: turnaround times, candidate approvals, invoice approvals, performance monitoring and budget.

#### **SECTION 5: CONTRACT QUESTIONS AND PRE-BID CONFERENCE**

Each prospective bidder is strongly urged to attend an optional pre-bid conference prior to the submission of their bid in order to clarify specification requirements and resolve potential matters of alternative interpretation and intent regarding the specifications and/or scope of services. The Pre-Bid conference will be held at the following location:

**150 Greenwich Street, 37<sup>th</sup> Floor  
New York, NY 10007**

HRA will set the date and time of the Pre-Bid Conference.

## **SECTION 6: GENERAL STANDARDS AND SPECIFIC CONDITIONS**

In general, the Contractor should not disqualify a candidate unless a current medical disability which prevents performance of his/her duties in a reasonable manner or which may reasonably be expected to render the candidate unfit to continue to perform these duties in a reasonable manner. (Duties can be found in “Attachment A”)

The following are examples that would result in disqualification:

- 1) Drug or alcohol dependency which impairs the ability to perform the job duties will disqualify a candidate. A history of drug or alcohol dependency shall not result in automatic disqualification.
  - 2) Infectious or communicable disease in an infectious state (e.g. tuberculosis) will disqualify a candidate.
  - 3) Blood or vascular disorders that would interfere with job performance will disqualify a candidate.
  - 4) Blood pressure: If an initial reading displays a systolic reading higher than 140 or diastolic reading higher than 90, 2 additional readings shall be taken and averaged. **If the average still exceeds the above, the candidate shall be disqualified.** Candidates who require medication to control blood pressure will not be considered if the medication interferes with alertness, judgment or consciousness and/or candidate demonstrates organ damage secondary to hypertension.
  - 5) A recent history of an acute cardiac event will disqualify a candidate. Uncontrolled symptoms or abnormal findings of coronary vascular or myocardial insufficiency preclude disqualification. Lastly, abnormality in cardiac rate and/or rhythm will disqualify the candidate.
- B. The preceding list of conditions should serve as a guide for the medical examining officer to determine possible causes for disqualification. Such causes are not necessarily confined to the above list and may include other conditions.

## **SECTION 7: REPORTING RESULTS**

- A. Medical results and recommendation shall be submitted to the Agency designee in a written report within 5 business days of initial testing.

- B. All requests for exams will be made by an authorized Agency designee. The Agency designee and the form of request shall be determined before start of work. The physician shall provide telephone and cell phone numbers from a primary and secondary contact who will be available to receive service calls 9:00 AM through 5:00 PM, Monday to Friday.

## **SECTION 8: APPEAL PROCESS**

If a candidate is deemed unqualified by the physician, the candidate may appeal the determination. In such circumstance, the physician will be required to appear and represent the Agency, in an administrative proceeding, defending the test results as originally determined.

## **SECTION 9: SCOPE OF WORK**

### **A. General**

To ensure appropriate medical testing of prospective Peace Officers, the Agency would like to contract with licensed medical practitioners to streamline and standardize the drug test protocol for pre-employment and for cause to ensure that we thoroughly assess pass or fail results, and to determine whether the drug(s) prescribed are consistent with the terms and conditions of employment or warrant an assessment pursuant to Section 72 of the New York Civil Service Law.

- B. The Contractor shall perform a medical examination to determine the physical suitability of approximately 300 candidates per year (approximately 900 candidates total) to be hired by the Agency as Special Officers. The examination requirements will include:

- 1) A review of personal and family health history.
- 2) Complete physical examination by the Physician.
- 3) Eye test for near, far, and color vision.
- 4) Audiometric screening.
- 5) Urine analysis (chemical dipstick).
- 6) PPD Tuberculin Test (unless history of prior is positive).
- 7) Complete blood analysis and microscopic urine analysis (CBCk, SMAC 24 & UA).

- C. As part of the medical exam, the Contractor will also conduct the following drug tests which will be sent to a licensed medical facility specializing in drug testing for analysis. The results of the analysis will be returned to the Contractor with a determination of pass or fail.

- 1) Hair (Max panel testing for all illegal substances also control prescription medications).
- 2) 12 Panel Drug Screen with chain of custody documentation. The tests are for the following drugs:
  - i) Cocaine

- ii) Marijuana (THC, cannabinoids)
- iii) Phencyclidine (PCP – angel dust)
- iv) Amphetamines (including methamphetamines)
- v) Basic Opiates (including heroin, morphine, and codeine)
- vi) Benzodiazepines (including valium, Xanax)
- vii) Barbiturates
- viii) Methadone
- ix) Propoxyphene
- x) Methaqualone (Quaaludes)
- xi) Expanded amphetamines MDMA/6AM (Ecstasy, Molly)
- xii) Expanded opiates (including painkillers like Percodan, Percocet, Oxycodone, Oxymorphone, Hydrocodone)

3) GC/MS urine drug screening confirmation—automatically performed if a substance is detected in the 12-panel drug screen.

- D. The Contractor will also perform the 12 panel tests post-employment for Special Officers referred by the Agency for reasonable suspicion or cause of drug use.
- E. The Contractor must confer with the Human Capital Management point person before contacting the donor for any reason, including requesting follow-up information and/or documentation.
- F. The Contractor must provide the Office of Legal Affairs Employment Law Division (ELD) with a copy of the actual lab results as soon as possible after Contractor receives the results, resulting from a pass or fail test. Contractor should send the lab results to ELD via US Mail or commercial courier service.
- G. The Contractor must also provide the pre-screening questionnaire/ingestion disclosure to ELD, which is prepared by the donor so that they may assess and provide feedback.
- H. The following tests (if medically indicated) will require prior approval by the Agency before being administered:
  - i. Electrocardiogram (EKG)
  - ii. Chest X-Ray (PA view) only with history of positive PPD

The Contractor shall get immediate approval for the additional tests by calling authorized Agency designee(s) and immediately receiving a faxed confirmation from the Agency authorizing the Contractor to perform the tests.

## **SECTION 10: WORK PROCEDURE**

- A. Agency's Medical Exam coordinator ("Coordinator") will create a list of candidates for tests and e-mail the list to the Contractor for scheduling candidates to be examined and tested.
- B. Contractor will send confirmation of schedule dates for candidates within a time frame to be determined in collaboration with the Coordinator.
- C. Contractor will provide to Coordinator a list of (i) candidates who were examined and tested and (ii) candidates who didn't take the medical or drug test. Contractor shall provide the names of those candidates to the Coordinator no later than the next day after a no-show for those tests.
- D. Contractor will follow up with candidates who did not appear for their examination and test on a previously scheduled date and time and reschedule the dates, after consultation with Coordinator on dates and times.
- E. Test time and location depends on the number of candidates. Contractor will collaborate with the Department on specifics pertaining to those details.
- F. Contractor will inform agency of outcome of examinations and tests within 1 to 2 days after the Contractor receives the examination results. Contractor will inform Department in the form a written report, notifying the Department on whether the candidate has passed or failed the tests.

## **SECTION 11: THE BID**

- A. Each bidder must enter its Proposed Cost per Person for each of the following Categories:
  - 1. Costs for Complete Medical (Sub-Total A)
  - 2. Costs for Pre-Employment drug testing (Sub-Total B)
  - 3. Costs for Post-employment drug testing (Sub- Total C)
  - 4. Costs for defending administrative appeal for negative medical determination (Sub-Total D)
  - 5. Costs for pre-approved EKG and Chest X-ray exams (Sub-total E)
- B. Each bidder must (1) multiply their Proposed Cost per medical exam by the estimated number of people to be evaluated for the Medical Testing Category and (2) and enter the results in the Sub-Total Cost for Sub-Totals A, B and C. Exam costs for Sub-Totals B and C shall be market prices.

- C. Each bidder must (1) multiply their Proposed Cost per appeal appearance by the estimated number of people expected to challenge the Medical Exam findings and (2) enter the results in the Sub-Total Cost for Sub-Total D.
- D. Each bidder must (1) multiply their Proposed costs per EKG and Chest X-ray exam separately and enter each sub-total, and (2) enter the results in Sub-total E for the combined costs for both sets of exams. Exam costs for Sub Total E shall be market prices, and will only be ordered after pre-approval from the Department that the exam is necessary.
- E. Each bidder must calculate the sum of the Sub-Total Costs of A, B, C, D and E and then enter the result as the Total Cost.
- F. Each bidder must write out the Total Cost in words. This is the total bid amount.
- G. A bidder's entered bid amount represents the complete cost to the Department for the respective items of service and is deemed inclusive of overhead, profit, insurance, delivery, and all other charges.
- H. All estimated number of people listed on the Bid Sheet and in these Specifications are for bidding estimate purposes only. The Department does not guarantee a minimum or maximum amount of services to be performed under this Contract.
- I. The rates quoted for this solicitation shall remain fixed for the duration of the contract. The total contract amount shall not exceed \$300,000.00.
- J. The Contract will be awarded to the lowest responsive and responsible bidder.
- K. All bidders must complete all blank spaces on the bid sheet.
- L. Submission of Required Documentation
  - 1. The following forms, all of which are contained in the Bid Book, shall be completed and submitted with the Bid:
    - a. Bid form;
    - b. Bid Security (if required);
    - c. Schedule B- Subcontractor Utilization Plan (if included in this Bid Book);

- d. Vendor Information Sheet;
  - e. Tax Affirmation.
2. Notwithstanding any of the above, the list of forms enumerated in this Section is not an all-inclusive list of the forms required to be submitted with the bid. The solicitation package, an addendum, or a City, State, or Federal law or regulation may require the bidder to submit additional forms with the bid. Failure to provide any other documentation required under this solicitation at the time of bid submission and/or as a pre-requisite to award may result in the bidder being deemed nonresponsive by the Department.
  3. In the event that you are determined by the Department to be the lowest responsible bidder, as provided in this solicitation, within ten (10) days of notification thereof you must supply all documentation or information required pursuant to the solicitation including confirmation of required insurance coverages set forth on pages 13-15 (Schedule of Insurance, Liquidated Damages and Bonds) in such form as may be satisfactory to the Department.
  4. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS NOTICE SHALL CONSTITUTE GROUNDS FOR REJECTION OF YOUR BID.

## **SECTION 12: INVOICING**

- A. No invoice will be paid unless there is a corresponding examination having taken place.
- B. The contractor shall submit monthly numbered invoices to the Agency. Invoices shall be submitted for work done at the end of the following month for work that was performed during the previous monthly billing period, or as otherwise directed by the Agency. For example, invoices for work performed in December must be submitted no later than January 31<sup>st</sup>.
- C. Contractor must submit invoices and all required attachments on company letterhead, containing the following information at a minimum:
  - 1) Invoice Number (must be unique);
  - 2) Invoice Date (must be current);
  - 3) Contract Number;
  - 4) Contractor's Federal Employer Identification Number (EIN);
  - 5) Contract Procurement Identification Number (PIN);
  - 6) Date that Services were performed;
  - 7) Description of Work, including name of person examined;
  - 8) Itemized prices(s) for service(s) performed/goods delivered;
  - 9) Billing Period (e.g. 4/1/20 – 4/31/20);
  - 10) Proper Payment Remittance Address.

- D. All invoices shall be sent to the Department of Social Services, 150 Greenwich Street, 32th Floor, New York, NY 10007. Attn: Human Capital Management (HCM).

### **SECTION 13: PAYMENT FOR SERVICES**

- A. No payment for services will be made in excess of the registered Contract award. The Department makes no representation that funds will be available to continue the Contract to its expected termination date if the registered Contract amount is exhausted before that date. The City of New York does not guarantee that all of the contract amount will be authorized.
- B. Payment shall be made only upon receipt by the Agency of a proper invoice and required documentation as described in Section 11 of these Specifications.
- C. 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 a check, draft or similar paper instrument, which is initiated through an electronic terminal, telephone instrument or computer or magnetic tape so as to order, instruct and/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 an "EFT Vendor Payment Enrollment Form" which shall be provided 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.
- D. 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 requirement 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.

## **SECTION 14: PERFORMANCE STANDARD**

- A. The Agency will evaluate Contractor's performance to ensure contract compliance. The evaluation process includes, but is not limited to, observation of quantity and quality of service delivery, conference with Contractor's staff on areas where improvements are identified as being necessary, review of records relating to Contractor's staff and fiscal matters, and Contractor's timeliness when submitting reports and invoices.
- B. In evaluating Contractor's performance, the Agency will concentrate on areas such as quantity and quality of service, the Contractor's managerial control, fiscal accountability, timeliness of performance, and cost effectiveness. Both announced and unannounced inspections will be part of the evaluation process.

## **SECTION 15: PERFORMANCE EVALUATION**

In accordance with Section 4-01 of New York City Procurement Policy Board (PPB) Rules, "Evaluation and Documentation of Vendor's Performance", failure to conform to all terms and conditions governing quality of service and fiscal management of this Contract will result in an unsatisfactory contract evaluation and notification of deficient performance. At a minimum, the Agency shall evaluate Contractor's performance on an annual basis. If Contractor fails to comply with its contractual obligations, the Agency will document each occurrence, as necessary and required. The Agency shall incorporate the evaluation and supporting documentation in an evaluation report. The Agency shall send a copy of the evaluation report to the Contractor. Within fifteen (15) days of its receipt of the evaluation report (or any notification of deficient performance), Contractor shall respond in writing to the Agency. Contractor's written response shall include a corrective action plan identifying, with specificity, the steps Contractor intends to take to remedy any deficiencies identified by the Agency. Contractor's failure to submit a written response within fifteen (15) days shall constitute Contractor's agreement with the indications and contents of the evaluation report. However, it will not release the Contractor from its obligations under this or any other section of this Contract. An unsatisfactory evaluation noted in the City's database may adversely impact future contract awards with the City of New York.

## **SECTION 16: SUBCONTRACTING**

- A. Subcontractors may be considered for this Contract. For subcontracts for amounts greater than five thousand dollars (\$5,000), all subcontracting requests must be made in writing to HRA, which will either approve or disapprove any such request in its sole discretion. Each request must include the name of the subcontractor and the entity's Tax Identification Number or the individual's Social Security Number. This information will

be used for registration of the subcontractor. All information must be submitted on a form to be provided by the Agency.

- B. If it is determined that, in aggregate, more than 30% of the Contract amount is to be subcontracted, approval to subcontract a greater percentage of the Contract amount may only be granted in writing by the Agency.
- C. If an approved subcontractor elects to subcontract any portion of its Subcontract, the proposed subcontractor's information shall be submitted in the same manner as that for the approved subcontractor(s).
- D. Before entering into any subcontract, Contractor shall inform the Subcontractor fully and completely of all provisions and requirements of this Contract relating either directly or indirectly to the services to be performed and the materials to be furnished under such subcontract. Every Subcontractor shall expressly stipulate that all labor performed, and materials furnished by the Subcontractor shall strictly comply with the requirements of this Contract.
- E. The Agency's approval of a Subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities. The Contractor shall be solely responsible to the Agency for the acts or defaults of its Subcontractor, as well as the acts or defaults of the Subcontractor's officers, agents, and employees. For purposes of this Contract, a Subcontractor's officers, agents, and employees will be deemed agents or employees of the Contractor to the extent of its subcontract.
- F. Contractor shall ensure that all Subcontractors performing services have either their own insurance coverage or are covered by the Contractor's insurance.

The payment agreement between the Contractor and its Subcontractors shall contain the same terms and conditions pertaining to the method of payment for services as indicated in this Contract.

## **SECTION 17: LIQUIDATED DAMAGES**

- A. Liquidated damages may be assessed, at the Agency's option, as deductions against any pending invoice of the Contractor. All such amounts that are not so deducted will be paid forthwith to the Agency by the Contractor, upon written demand. This provision is inapplicable in cases where the appearance of delay is consequential to compliance with the Agency's instructions, procedural understandings with the Contractor, and other terms, provisions and conditions of this Agreement. Liquidated Damages are not

penalties against the Contractor and are in addition to all other remedies allowed under this Agreement or otherwise by law.

- B. For each instance in which Contractor fails to provide test results within the required timeframe, the Agency will assess damages at the rate of \$50 per day that test results are late.
- C. The Agency retains the option to require Contractor to directly pay to the Agency, or to deduct from any payment due or to become due to Contractor, such amount as may be assessed for liquidated damages. In no event shall Contractor be held liable for any delays which are due to the Agency's failure to perform; in such case, the delivery date may be adjusted to reflect the Agency's precipitated delay.
- D. The Agency retains the option to require Contractor to directly pay the Agency, or to deduct from any payment due or to become due to Contractor, such amount as may be assessed for liquidated damages. In no event shall Contractor be held liable for any delays which are due to the Agency's failure to perform; in such case, the delivery date may be adjusted to reflect the Agency's precipitated delay.
- E. This Section shall not apply in the case of delays resulting from Acts of God, natural disaster, or declaration of war.

## ATTACHMENT "A"

C – XI  
SPECIAL OFFICER OCCUPATIONAL GROUP [252]

CODE NO. 70810

### SPECIAL OFFICER

#### GENERAL STATEMENT OF DUTIES AND RESPONSIBILITIES

Under supervision, perform Special Officer Duties of ordinary difficulty and responsibility to provide physical security, safety, loss prevention and maintenance of order in accordance with agency orders and procedures. Uses computers and operates electronic security and safety monitoring systems and other equipment and devices. May operate a motor vehicle to perform duties. All personnel perform related work.

#### Examples of Typical Tasks

Patrols designated areas of assigned locations utilized by city agencies, public buildings and facilities and surrounding areas to maintain order, preserve the peace, and safeguard life and property against fire, vandalism, theft, etc. Reports observed security and safety hazards and conditions, including, but not limited to fire safety.

Screens employees and visitors. Operates, and monitors security equipment. Reports equipment needing maintenance or repair. Gives routine information to visitors and clients and directs them to the proper individuals and offices.

Discourages and objects loiterers and disorderly persons. When appropriate, arrests and issues summonses to law violators on premises.

Transports, escorts an/or arranges for transport of persons in custody to police precinct and has arrest recorded on police blotter. Prepares and transmits all necessary documents relating to arrest. Testifies in court and at other tribunals.

Responds to and reports emergency and security incidents and unusual occurrences and submits written reports. Assists in implementing the Emergency Action Plan and Coordinates with Fire Safety Directors.

As required, provides assistance to the sick, injured, mentally and physically disabled, and calls for emergency assistance, ambulance and/or medical attention when necessary. If properly certified and authorized by the agency, may administer first-aid. Completes and forwards requisite paperwork.

Records daily actions in memo book. Maintains record/daily logs of persons entering or leaving buildings. Maintains bulletin boards by adding and removing materials to keep information current.

May make clock rounds, as required; may control vehicular traffic on grounds and/or premises.

Monitors and reports unusual events from security systems as required; distributes monitors, maintains and secures assigned equipment and property. Coordinate Requests for repair of such equipment.

Attends, completes, and maintains State and Agency training requirements.

Cooperates and may assist in supervising contracted security guards and reports issues arising from the work they perform.

In the temporary absence of the supervisor may perform the supervisor's duties.

### **Qualification Requirements**

1. A four-year high school diploma or its educational equivalent approved by a state's department of education of a recognized accrediting organization; and
2. Individuals serving in this title are designated as Peace Officers by the New York State Criminal Procedure Law. Therefore, all candidates must be qualified to serve as Peace Officers. Incumbents must satisfy the training requirements established by the State of New York for Peace Officers and obtain certification. Once obtained, this certification must be maintained for the duration of employment.

### **License Requirement for Certain Positions**

A motor vehicle driver license valid in the State of New York is required for appointment to positions in certain agencies. If required, this license must be maintained for the duration of employment.

### **Direct Lines of Promotion**

From: None

To: Supervising Special Officer  
(70817)

## **NOTICE TO ALL PROSPECTIVE CONTRACTORS**

### **PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT**

#### **ARTICLE I. M/WBE PROGRAM**

Section 6-129 of the Administrative Code of the City of New York (“Section 6-129”) establishes the program for participation in City procurement (“M/WBE Program”) by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services (“DSBS”) promulgated thereunder.

**If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the “M/WBE Utilization Plan”) and are detailed below.**

**The Contractor must comply with all applicable MBE and WBE requirements for this Contract.**

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

References to MBEs or WBEs shall also include such businesses certified pursuant to the executive law where credit is required by section 311 of the New York City Charter or other provision of law.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

#### **PART A**

### **PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS**

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, ("**Participation Goals**"), as applicable, are set forth on Schedule B, Part 1 to this Contract (see Page 1, Line 1 Total Participation Goals) or will be set forth on Schedule B, Part 1 to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with DSBS as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part 2 (see Pages 1-2) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be

deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered (“Master Services Agreement”) and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part 2 (page 2) indicating the prospective contractor’s certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed non-responsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part 2 (see Pages 1-2) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor’s required certification and affirmations. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

**C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART 2). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART 3). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER 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 COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED**

**OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.**

5. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of city-certified MBE and WBE firms may be obtained from the DSBS website at [www.nyc.gov/buycertified](http://www.nyc.gov/buycertified), by emailing DSBS at [buyer@sbs.nyc.gov](mailto:buyer@sbs.nyc.gov), by calling (212) 513-6451, or by visiting or writing DSBS at One Liberty Plaza, New York, New York, 10006, 11<sup>th</sup> floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), emailing [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact

information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE Utilization Plan**, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE Utilization Plan** in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE Utilization Plan** has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of **the Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the **Participation Goals** in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its **M/WBE Utilization Plan**.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part 3 of Schedule B **and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency Contact Person listed in Schedule B, Part 1. Full or partial waiver requests that are received later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due may be rejected as untimely.** Bidders, proposers, or contractors, as applicable, who have submitted timely requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE Utilization Plan**. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency

may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE** Utilization Plan. (a) A Contractor may request a modification of its **M/WBE** Utilization Plan after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's **M/WBE** Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;

(iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the **M/WBE** Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;

(viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If the Contractor was required to identify in its bid or proposal the MBEs and/or WBEs they intended to use in connection with the performance of the Contract or Task Order, substitutions to the identified firms may only be made with the approval of the Agency, which shall only be given when the Contractor has proposed to use a firm that would satisfy the **Participation Goals** to the same extent as the firm previously identified, unless the Agency determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts. In making such determination, the Agency shall require evidence of the efforts listed in Section 11(a) above, as applicable, along with any other relevant factors.

13. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE Utilization Plan** and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its **M/WBE Utilization Plan**, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

15. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

## **PART B**

### **MISCELLANEOUS**

1. The Contractor shall take notice that, if this solicitation requires the establishment of a **M/WBE** Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE** Utilization Plan.
2. Pursuant to DSBS rules, construction contracts that include a requirement for a **M/WBE** Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.
3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.
4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).
5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

## **ARTICLE II. ENFORCEMENT**

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.
2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE** Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.
3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:

- (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) making a finding that the Contractor is in default of the Contract;
- (d) terminating the Contract;
- (e) declaring the Contractor to be in breach of Contract;
- (f) withholding payment or reimbursement;
- (g) determining not to renew the Contract;
- (h) assessing actual and consequential damages;
- (i) assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) taking any other appropriate remedy.

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially

useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

6. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

## M/WBE PRICE PREFERENCE RIDER

In accordance with the New York City Charter, the PPB Rules, and the terms and conditions of the Invitation for Bids (IFB), the responsive and responsible bidder whose bid meets the requirements and objectively measurable evaluation criteria set forth in the IFB, and whose bid represents the best value to the City by optimizing quality, cost, and efficiency, will be selected for the contract. In making such determination, the Agency Chief Contracting Officer (ACCO) or an ACCO-convened committee must consider the lowest responsive bid and the next lowest responsive bids within 10% of the lowest responsive bid in price, after providing all City and State Certified M/WBEs a price preference of 10% (such that bids from all City and State Certified M/WBEs will be evaluated as if the bid price were 10% lower).

## Part 1: M/WBE Participation Goals

### Contract Overview (To be completed by contracting agency)

APT E-Pin# 09620B0002 FMS Project ID# \_\_\_\_\_  
 Project Title PRE-EMPLOYMENT MEDICAL EXAMINATION FOR PEACE OFFICERS Agency PIN# 19BPESR01801  
 Contracting Agency \_\_\_\_\_ Bid/Proposal Response Date \_\_\_\_\_  
 Agency Address 150 Greenwich Street, 32nd Floor City New York State NY ZIP 10007  
 Contact Person Mostaque Chowdhury Title Director of HR Records/ OSR/ HCM  
 Telephone 929-221-5567 Email chowdhurymo@dss.nyc.gov

Project Description (attach additional pages if necessary)

Department of Social Services (DSS) / Office of Staff Resources (OSR) is soliciting bids from qualified vendors to perform Pre-Employment Medical Examination for Peace Officers who shall work at various Human Resources Administration Job Centers and Department of Homeless Services Shelters **+**

Bidder or proposer  is required OR  is not required to specifically identify the contact information of all M/WBE firms they intend to use as a subcontractor on this contract, including the M/WBE vendor name, address and telephone number in the space provided below in Part 2 Section 4.

### M/WBE Participation Goals for Services

Enter the percentage amount for each category or for an unspecified Goal.

Prime Contract Industry: Standard Services

#### Category and Breakdown:

Unspecified 30.00 %  
 Black American \_\_\_\_\_ %  
 Hispanic American \_\_\_\_\_ %  
 Asian American \_\_\_\_\_ %  
 Women \_\_\_\_\_ %

Total Participation Goals \_\_\_\_\_ %  
 Line 1

## Part 2: M/WBE Participation Plan

(To be completed by the bidder/proposer unless granted a full waiver, which must be submitted with the bid/proposal in lieu of this form)

### Section 1: Prime Contractor Contact Information

Tax ID# \_\_\_\_\_ FMS Vendor ID# \_\_\_\_\_  
 Business Name \_\_\_\_\_ Contact Person \_\_\_\_\_  
 Business Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
 Telephone \_\_\_\_\_ Email \_\_\_\_\_

### Section 3: Contractor M/WBE Utilization Plan

Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. Check applicable box. The Proposer or Bidder will fulfill the M/WBE Participation Goals:

- As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the contract the value of which is at least the amount located on Lines 2 or 3 in the panels in Section 2, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals. Please check all that apply to Prime Contractor:  MBE  WBE
- As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner's participation and/or the value of any work subcontracted to other M/WBE firms is at least the amount located on Lines 2 or 3 in the panels in Section 2, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.
- As a non-M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the amount located on Lines 2 or 3 in the panels in Section 2, as applicable.

### Section 2: M/WBE Utilization Goal Calculation

#### Prime Contractor Adopting Agency Participation Goals

For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals.

Total Bid/Proposal Value \$ \_\_\_\_\_  
**multiplied by** **x**  
 Total Participation Goals \_\_\_\_\_ %  
 (Line 1 above)

Calculated M/WBE Participation Amount \$ \_\_\_\_\_  
 Line 2

**OR**

#### Prime Contractor With Partial Waiver Approval Adopting Revised Participation Goals

For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Revised M/WBE Participation Goals.

Total Bid/Proposal Value \$ \_\_\_\_\_  
**multiplied by** **x**  
 Total Revised Participation Goals \_\_\_\_\_ %

Calculated M/WBE Participation Amount \$ \_\_\_\_\_  
 Line 3

**Section 4: General Contract Information**

**What is the expected percentage of the total contract dollar value that you expect to award in subcontracts for services, regardless of M/WBE status?** \_\_\_\_\_ %

Enter a brief description of the type(s) and dollar value of subcontracts for all services you plan to subcontract if awarded this contract, along with the anticipated start and end dates for such subcontracts. For each item, indicate whether the work is designated for participation by an M/WBE. Where the contracting agency's solicitation has indicated a requirement that the bidder or proposer specifically identify the contact information of all M/WBEs they intend to use on this contract, vendors must also include the M/WBE vendor name, address and telephone number in the space provided below. Use additional sheets if necessary.

Description of Work	Start Date (MM/YY)	End Date (MM/YY)	Planned \$ Amount	Designated for M/WBE		M/WBE Vendor Name	M/WBE Address	M/WBE Telephone
				Y	N			
1. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -
2. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -
3. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -
4. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -
5. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -
6. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -
7. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -
8. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -
9. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -
10. _____	/	/	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	( ) -

**Section 5: Vendor Certification and Required Affirmations**

- I hereby:
- acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;
  - affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;
  - agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;
  - agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such Goals are modified by the Agency; and
  - agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or if a partial waiver is obtained or such Goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Print Name \_\_\_\_\_ Title \_\_\_\_\_

## Request for Waiver of M/WBE Participation Requirement

### Contract Overview

Tax ID# \_\_\_\_\_ FMS Vendor ID# \_\_\_\_\_  
 Business Name \_\_\_\_\_ Contact Name \_\_\_\_\_  
 Email \_\_\_\_\_ Telephone \_\_\_\_\_  
 Contracting Agency \_\_\_\_\_  
 APT E-Pin# 09620B0002 Bid/Proposal Due Date \_\_\_\_\_

### Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts some of this type of work but at a lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. Identify your subcontracting plan in the vendor certification section below.
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal requested here. Explain under separate cover.

### Vendor Contract History

Using the attached Excel template, list all contracts (for City and Non-City work) performed within the last 3 years and provide the requested information for each contract.

From the list of all contracts, provide reference information below for the 5 most relevant contracts in size, scale and scope (performed for New York City or any other entity) to the bid or proposal for which you are submitting this waiver request. Provide the requested information for each subcontract awarded during the life of the listed reference contract.

Please make sure to highlight the 5 reference contracts provided below among the comprehensive list of all your contract awards within the attached Excel template.

### Reference 1

Agency/Organization \_\_\_\_\_ Contract # \_\_\_\_\_  
 Reference Contact \_\_\_\_\_ Telephone \_\_\_\_\_ Email \_\_\_\_\_  
 Contract Start Date \_\_\_\_\_ Contract End Date \_\_\_\_\_ Total Contract Value \$ \_\_\_\_\_

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor?  Prime Contractor  Subcontractor  
 Was the Prime Contract subject to any Goals?  City M/WBE Goals  State Goals  Federal Goals  No Applicable Goals  
 Did the Prime Contractor meet Goal requirements?  Yes  No  N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
Percentage of total contract value subcontracted to other vendors		_____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.  
 \_\_\_\_\_ \$ \_\_\_\_\_

### M/WBE Participation Goals for Services

**Defined by AGENCY in bid/solicitation documents**  
 Percent of the total contract value to be subcontracted to M/WBE vendors for services and/or credited to an M/WBE Qualified Joint Venture.

Unspecified \_\_\_\_\_ %  
 Black American \_\_\_\_\_ %  
 Hispanic American \_\_\_\_\_ %  
 Asian American \_\_\_\_\_ %  
 Women \_\_\_\_\_ %

**Total Participation Goals \_\_\_\_\_ %**

---

**Proposed by VENDOR seeking waiver**  
 Percent of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted to M/WBE businesses for services. Or if M/WBE Qualified Joint Venture, percent of total contract value anticipated to be credited to M/WBE vendor(s).

Unspecified \_\_\_\_\_ %  
 Black American \_\_\_\_\_ %  
 Hispanic American \_\_\_\_\_ %  
 Asian American \_\_\_\_\_ %  
 Women \_\_\_\_\_ %

**Total Participation Goals \_\_\_\_\_ %**



**Reference 4**

Agency/Organization \_\_\_\_\_ Contract # \_\_\_\_\_

Reference Contact \_\_\_\_\_ Telephone \_\_\_\_\_ Email \_\_\_\_\_

Contract Start Date \_\_\_\_\_ Contract End Date \_\_\_\_\_ Total Contract Value \$ \_\_\_\_\_

Prime Contract description \_\_\_\_\_

Did the vendor perform as a Prime Contractor or as a Subcontractor?  Prime Contractor  Subcontractor  
Was the Prime Contract subject to any Goals?  City M/WBE Goals  State Goals  Federal Goals  No Applicable Goals  
Did the Prime Contractor meet Goal requirements?  Yes  No  N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain \_\_\_\_\_

**If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.**  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
Percentage of total contract value subcontracted to other vendors \_\_\_\_\_ %

**If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.**  
\$ \_\_\_\_\_

**Reference 5**

Agency/Organization \_\_\_\_\_ Contract # \_\_\_\_\_

Reference Contact \_\_\_\_\_ Telephone \_\_\_\_\_ Email \_\_\_\_\_

Contract Start Date \_\_\_\_\_ Contract End Date \_\_\_\_\_ Total Contract Value \$ \_\_\_\_\_

Prime Contract description \_\_\_\_\_

Did the vendor perform as a Prime Contractor or as a Subcontractor?  Prime Contractor  Subcontractor  
Was the Prime Contract subject to any Goals?  City M/WBE Goals  State Goals  Federal Goals  No Applicable Goals  
Did the Prime Contractor meet Goal requirements?  Yes  No  N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain \_\_\_\_\_

**If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.**  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
Percentage of total contract value subcontracted to other vendors \_\_\_\_\_ %

**If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.**  
\$ \_\_\_\_\_

**Vendor Certification**

Identify/list all the work areas you intend on subcontracting on the current anticipated contract for which you are submitting this waiver request.

*I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith. I further affirm that the work that I did not list as work that will be subcontracted on this contract for which I am submitting this waiver request is work that I have performed on past contracts and will not subcontract if awarded this contract.*

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

Print Name \_\_\_\_\_ Title \_\_\_\_\_

<p><b>Approvals (for Agency completion only)</b></p> <p>ACCO Signature _____ Date _____</p> <p>CCPO Signature _____ Date _____</p>	<p><b>Waiver Determination</b></p> <p><input type="checkbox"/> Full Waiver Approved</p> <p><input type="checkbox"/> Waiver Denied</p> <p><input type="checkbox"/> Partial Waiver Approved</p> <p>Revised Participation Goal _____ %</p>
--	---

**APPENDIX I**  
**PREVAILING WAGE SCHEDULE**

Wage Rates Not Required

## **APPENDIX II**

### **PROCUREMENT AND SOURCING SOLUTIONS PORTAL (PASSPort)**

## Vendor Enrollment



*This document is a quick-start guide for vendor account administrators who want to submit an enrollment package in PASSPort. For more detailed step-by-step instructions on the Vendor Enrollment process, please refer to the Vendor Enrollment User Manual. If you have any questions or need assistance, please reach out to the Mayor's Office of Contract Services (MOCS) at [help@mocs.nyc.gov](mailto:help@mocs.nyc.gov).*

Vendors who are currently doing (or planning to do) business with the City of New York are encouraged to complete the Vendor Enrollment process. To complete the Vendor Enrollment process, you must first complete the Vendor Account Creation process (please refer to the associated user manual for details). Once your account is created, log in to PASSPort to prepare and submit your organization's enrollment package online by providing the following:

1. **Business Information:** Provide information regarding your business revenue and contact information.
2. **Contacts:** Identify and add all of your principals and/or officers to your organization's contacts list, as well as designate an account signatory.
3. **Vendor and Principal Questionnaires:** Complete both vendor and principal questionnaires for your business and for any individuals who have a significant stake (10% or more) in the organization.
4. **Parent and/Controlling Entities:** Identify any parent or other controlling entities.
5. **Certificate of Incorporation (COI) Documentation:** Upload your organization's COI or equivalent document.
6. **e-Signature:** Submit an e-Signature for your account, which is a secure and accurate identification method for account signatories to sign documents with the City.

Once your organization's enrollment package has been submitted, MOCS will review the package and contact you with any questions or requests for additional information. After an enrollment package has been filed by MOCS, your organization will become fully enrolled in PASSPort and can continue to manage your account.

### Starting the Vendor Enrollment Process

1. Navigate and log in to PASSPort using your NYC.ID credentials: <http://www.nyc.gov/passport>
2. From the PASSPort homepage, the "**Profile**" button at the top of the page, then select "**Vendor Profile**"
3. Your vendor profile is displayed.
4. You will notice any alerts related to your account at the top of the page. Alerts starting with the  icon are warning alerts that will not stop you from proceeding with a process, while alerts starting with the  icon are blocking alerts that will prevent you from proceeding with a process until the specified action is completed.

Please refer to the steps on the following pages to assist you with preparing and submitting your vendor enrollment package.

## 1. Basic Information

On the **Basic Information** tab of your vendor profile, select and enter the following information:

1. Select your company's "**Annual gross revenue.**"
2. Select your company's "**Business Category.**"
3. Select the "**Date this business was formed.**"
4. Enter the "**State in which business was formed.**"
5. Enter the "**County in which business was formed.**"
6. Select the "**Property Type**" and enter the property's address.
7. Click the "**Save and Refresh**" button.

## 2. Contacts

Prior to completing your vendor and principal questionnaires, you must add all of your organization's principals and/or officers to your account as well as designate an account signatory. Navigate to the **Contacts** tab and follow the steps below:

1. Click the "**Add a Contact**" button.
2. Enter the "**First Name**" of the contact.
3. Enter the "**Last Name**" of the contact.
4. Enter the "**Email**" of the contact.
5. Click the "**Save and Close**" button.
6. Select a "**Role**" for the contact that was added. Multiple roles can be selected for a contact.
7. Continue adding contacts until you have added all of your principals and/or officers as well as designated an account signatory who will submit an e-Signature for your package. Once you are done adding contacts, click the "**Save and Refresh**" button.







After a principal or officer has been added as a contact on the **Contacts** tab, they are able to create a NYC.ID using the email address that is associated with their contact on the **Contacts** tab. Principals or officers can create a NYC.ID by navigating to <http://www.nyc.gov/passport>, clicking the "**Login**" button, and clicking the "**Create Account**" link. Please refer to the *Vendor Account Creation User Manual* for detailed step-by-step instructions.

Once that principal or officer creates a NYC.ID, they will be able to log in to PASSPort and access both the Vendor Questionnaire and their Principal Questionnaire for the vendor account. If the principal or officer previously had a NYC.ID, they would be able to be immediately log in to PASSPort as soon as they were added as a contact for the account.

## 3. Vendor and Principal Questionnaires

Now that you entered additional company information, added all of your principals and/or officers, and designated an account signatory, you are ready to start the vendor and principal questionnaires. Navigate to the **Disclosures** tab and follow the steps below:

1. Click the **“Edit”** button to open the first section of the **Vendor Questionnaire**.
2. Complete the eight sections of the **Vendor Questionnaire** by selecting answers to each question. Please note that if you select any form of Yes as an answer to a particular question, you will need provide additional details to answer the question and then click the **“Save”** button. Please note that in some scenarios you will need to add multiple rows of information to provide all of the necessary details.
3. After you have answered the questions for a particular section, click the **“Save and Next”** button. If you would like to exit the **Vendor Questionnaire** at any point, you can click the **“Save and Close”** button.
4. After you have answered the questions for all sections, click the **“Save and Close”** button.
5. If any attachments need to be added to your **Vendor Questionnaire**, click the **“Add an Attachment”** button on the **Disclosures** tab. Enter all the required information for the attachment and upload the necessary attachment. Click the **“Save”** button and then click the **“Close”** button.
6. Next you will need to identify all of your principals and/or officers. Click the   icon.
7. The vendor contacts that were added on the **Contacts** tab are displayed. Click the  icon to select a vendor contact and add it to the principal and/or officer grid.
8. Click the  icon to search for and select principal and/or officer. Continue to add contacts until you have added all of your principals and/or officers.
9. Click the **“Save and Refresh”** button.
10. Click the **“Edit”** button to start the **Principal Questionnaire** for the associated principal or officer.
11. Complete the six sections of the **Principal Questionnaire** by selecting answers to each question. Please note that if you select any form of Yes as an answer to a particular question, you will need provide additional details to answer the question and then click the **“Save”** button.
12. After you have answered the questions for a particular section, click the **“Save and Next”** button.
13. After you have answered the questions for all sections of the **Principal Questionnaire**, click the **“Save and Close”** button.

## 4. Parent and/or Controlling Entities

As part of the Vendor Enrollment process, any related (parent and/or controlling entities) entities must also submit vendor enrollment questionnaires in order for your vendor enrollment package to be reviewed and filed.

Parent entities are defined as an individual, partnership, joint venture, or corporation that owns more than 50% of the voting stock of a vendor. Controlling entities are any entities that manage the day-to-day or hold 10% or more ownership of the business or has the right to direct daily operations. Related entities are identified on the **Discourses** tab. Please follow the steps below to identify your related entities:

1. At the bottom of the **Discourses** tab, answer the following question: “**Do you have any parent or controlling entities?**” If you answer Yes to this question you must then click the  icon to search for and select your parent and/or controlling entities. You are able to search for related entities by EIN and/or FMS Vendor Code.
2. Click the “**Save and Refresh**” button.
3. The status of your identified related entities’ vendor questionnaires will be displayed in the grid. Please note that although you are able to submit your vendor enrollment package with pending related entities questionnaires, your package will be put on hold from being reviewed until all of the pending questionnaires are submitted.

## 5. e-Signature

Once you have completed your organization’s **Basic Information, Contacts, Vendor Questionnaire, Principal Questionnaire(s)**, and identified any related parent/controlling entities, you are ready to submit your vendor enrollment package. Please note, the person providing the e-Signature should be a principal or designee who is officially authorized to conduct business with the City on behalf of your organization. Please follow the steps below to provide your e-Signature:

1. From the **Disclosures** tab, click the “**Ready to Sign and Submit**” button and then click the “**OK**” button to confirm that you want to submit your vendor enrollment package.
2. Click the “**New Vendor Signature**” button.
3. Click the “**Ready to Sign**” button to create a new e-Signature.
4. Click the “**Signature Enrollment Package**” checkbox.
5. Enter your “**NYC.ID Password.**”
6. Click the “**Sign**” button to add your e-Signature.
7. Click the “**Submit Package**” button to submit your package to MOCS.



Once your organization’s enrollment package as been submitted, MOCS will review the package and contact you with any questions or requests for additional information. When MOCS files your enrollment package, your vendor account becomes fully enrolled. You will receive email notifications whenever MOCS takes action on your enrollment package.

**APPENDIX III**

**SUPPLY AND SERVICE CONTRACT RIDER**

SUPPLY AND SERVICES EMPLOYMENT REPORT  
 INSTRUCTIONS

WHO MUST FILE A SUPPLY AND SERVICES EMPLOYMENT REPORT

An S&S Employment Report (ER) must be filed if you meet the following conditions:

CONTRACTOR	CONTRACT VALUE	COMPANY SIZE	SUBMISSION REQUIREMENT
Prime and subcontractors	\$100,000 or greater	50 or more employees	S&S Employment Report
		Less than 50 employees	Less than 50 Employees Certificate

- A separate ER must be submitted for each facility involved in the performance of the contract. This may be headquarters or any "independently operating facility".

An "**independently operating facility**" is headquarters or a site separate from headquarters that makes its own personnel decisions including hires, transfers, promotions and terminations. If the staff employed by a facility is simply sent to a separate location to perform their work, they are still considered part of that facility and are included in one ER.

Example for which ERs must be filed from separate facilities: If your firm is supplying data processing equipment that is manufactured at your Chicago, Illinois plant, sold by your sales office in East Orange, New Jersey and serviced by your maintenance center in New York City, then an ER is necessary for each of the three sites. DLS retains the right to request the submission of an ER from headquarters, if deemed appropriate.

- If your contract value exceeds \$100,000 and your company at all of its facilities employs fewer than 50 employees, you need only submit a "Less than 50 Employees" Certificate.
- It is the responsibility of the contractor to promptly inform all proposed subcontractors that each subcontract must comply with the equal employment opportunity requirements of E.O. 50 and the implementing Rules. Each covered subcontractor must submit a completed Employment Report, or a "Less than 50" Certificate, for each of its operating facilities to the contracting agency before the fifth day following the award date (Comptroller's Office Registration Date) of the contract. DLS will review the subcontractor's Employment Report(s) for compliance.

DLS' REVIEW PROCESS

In accordance with Executive Order 50 (EO 50), upon receipt by DLS of a completed ER, DLS conducts a review of the contractor's current employment policies, practices and procedures, as well as perform a statistical analysis of the contractor's workforce, if necessary. The process is as follows:

1. Within five (5) business days, DLS will review the ER for completeness and accuracy. If any information is omitted or incorrect, or if necessary documents are not submitted, the submission shall be deemed incomplete and DLS will inform the contractor. The substantive compliance review does not commence until the submission is complete. **An incomplete submission will delay the review process and may preclude or interrupt the contract approval.**
2. If the ER submission is complete, the compliance review will proceed, resulting in one of the following:

**Certificate of Approval**

The contractor is found to be in compliance with all applicable laws and regulations. The approval is valid for 36 months.

### **Continued Approval Certificate**

The contractor has been issued a Certificate of Approval in the previous 36 months which is good for the applicable contract.

### **An Administrative Certificate of Compliance**

Issued when the contractor has been audited by the United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) and is valid for 36 months.

### **Conditional Certificate of Compliance**

The contractor is required to take corrective actions in order to be in compliance with EO 50. The contractor must meet the conditions within three months of the issue of the Conditional Certificate.

### **Determination of Nonperformance**

The contractor has failed to take the required corrective actions stipulated in the Conditional Certificate. A determination of nonperformance may prevent a contractor from receiving an award of a contract.

## **HOW TO COMPLETE THE EMPLOYMENT REPORT**

### Contents

General Information

Part I: Contractor/Subcontractor Information

Part II: Employment Policies and Practices

Part III: Employment Data Tables

Signature Page

### PART I: CONTRACTOR/SUBCONTRACTOR INFORMATION

Questions 7 – 11: Please provide the requested company information. All contracts must have a designated Equal Employment Officer.

Question 12: If you are a subcontractor, you must state the name of the contractor for whom you are providing the construction services.

Question 13: Please indicate how many employees are working in the facility(ies) covered by this ER .

Question 14: A list of industry codes can be found in the appendix of this document.

Question 15a – g: The Procurement Identification Number (PIN) and the Contract Registration ID Number (CT#) can be obtained from the City agency. Explain the nature of the good(s) and/or service(s) being provided under this contract.

Questions 16: List the names and addresses of all of your firm's facilities which are performing work on this contract. (A facility is the headquarters or an operating facility that makes its own personnel decisions. Please note that each separate location is not an independent operating facility unless hiring and termination decisions are made there). For example, a computer organization might have a sales office in Newark, New Jersey which negotiated and/or submitted a contract proposal, manufacturing facilities in Tetersboro, New Jersey and Schaumburg, Illinois which produced the equipment; and a facility in New York City providing systems analysts, programmers and technicians to develop, install and maintain the system. Since all four (4) facilities are involved in performing the contract, all four (4) are independent operating facilities, and they must be identified. If a facility's employment policies, procedures and employment action determinations are made at a different facility or headquarters, that facility must be identified as well. If you are uncertain whether a particular facility should be included, please call DLS and ask for assistance.

Question 17: All subcontractors with subcontracts in excess of \$100,000 must be identified by name and address. As a selected proposed contractor, you must ensure that each of your subcontractors obtain an ER as soon as possible after your organization is selected for the contract.

Questions 18 – 21: These questions refer to your firm's particular facility locations which have been reviewed in the past 36 months. If the operating facilities in the current proposed contract include any locations(s) different from those reviewed and certified in the past 36 months, ERs must be submitted for these facilities.

If your proposed facilities have received a valid Certificate of Approval within the past 36 months, been audited OFCCP, or have submitted an ER for a different contract for which you have not yet received a compliance certificate, then you only need to complete and submit the following:

- General Information section
- Part I - Contractor/Subcontractor Information
- Signature Page

If you are currently waiting for an approval on another contract previously submitted, be certain to identify the date on which you submitted the completed Employment Report, the name of the City contracting agency with which the contract was made, and the name and telephone number of the person to whom the ER was submitted.

If your company was issued a Conditional Certificate of Approval, all required corrective actions must have been taken or DLS will not issue a Continued Certificate.

If the company was audited by the OFCCP, also provide the following:

- Identify the reviewing OFCCP office by its name and address
- If an unconditional certificate of compliance was issued by the OFCCP, attach a copy of the certificate in lieu of completing Parts II and III;
- Include copies of all corrective actions and documentation of OFCCP's performance; and
- Provide a copy of all stated OFCCP findings.

Question 22: Please provide a copy of any Collective Bargaining Agreement(s) which is negotiated through an employer trade association on behalf of your organization or any of its affiliates.

## **PART II: EMPLOYMENT POLICIES AND PRACTICES**

*Remember to label all documents with the question number for which they are submitted.*

Questions 23a – j: You must respond to the questions as to whether or not your firm has documents reflecting written policies, benefits and procedures. If so, then you must identify by name each document in which the policy(ies), procedure(s) and benefit(s) is located and submit copies of all of the document(s). If your firm follows unwritten practices or procedures, include an explanation of how they operate. Please submit the most current document(s), including all applicable amendments. Label each document and/or unwritten practice according to the question to which it corresponds (e.g. 23a, 23b, etc.)

Questions 24a – h: Inquires about the manner/methods by which you comply with the requirements of the Immigration Reform and Control Act of 1986 (IRCA).

Question 25: Inquires into where and how I-9 forms are maintained and stored.

Questions 26a – e: Inquires into whether or not there is a requirement that an applicant or employee be subjected to a medical examination at any given time. Copies of the medical information questionnaire and instructions must be submitted with the Employment Report.

Question 27: Indicate the existence and location of all statements of your firm's Equal Employment Opportunity policy and attach a copy of each statement.

Question 28: Submit any current Affirmative Action Plan(s) created pursuant to Executive Order 11246.

Question 29: If your firm or collective bargaining agreement has an internal grievance procedure, indicate this and submit a copy of the policy and procedure. If unwritten, explain its nature and operation. Explain how your firm's procedure addresses EEO complaints.

Question 30: If your employees have used the procedure in the last three (3) years, please submit an explanation in the format indicated below:

1. Number of complaint(s)	2. Nature of the complaint(s)	3. Position(s) of the complainant(s)	4. Was an investigation conducted? Y/N	5. Current status of the disposition
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Question 31. Indicate whether in the past three (3) years complaints have been filed with a court of law or administrative agency, naming your company as a defendant (or respondent) in a complaint alleging violation of any anti-discrimination or affirmative action laws. If yes, develop and submit a log to show, for each administrative/and or judicial action filed, the following information:

1. Name(s) of complainant(s)	2. Administrative agency or court in which action was filed	3. Nature of the complaint(s)	4. Current status	5. If not pending, the complaint's disposition
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Question 32: Identify each job for which a physical qualification exists. Identify and explain the physical qualification(s) for each stated job. Submit job descriptions for each job and the reasons for the qualifications.

Question 33. Identify each job for which there exists any qualification related to age, race, color, national origin, sex, creed, disability, marital status, sexual orientation or citizenship status. Identify and explain the specific related qualification for each job stated. Submit job descriptions for each job and the reasons for the qualifications.

Question 34: Please check for which job categories the listed policies and practices listed apply.

Question 35: If you employee 150 persons or more please indicate the relevant geographical area from which you recruit for each job category.

LESS THAN 150 EMPLOYEES: Vendors or suppliers with less than 150 employees at the facility(ies) performing on this contract need only complete Parts I, II and the Signature Page.

**PART III: EMPLOYMENT DATA TABLES**

**FORM A: JOB CLASSIFICATION AND INCUMBENTS REPORT**

Indicate the name and location of the reported facility in the upper right hand corner of Form A. Please circle the occupational category at the top of the page in order to identify the job titles being reported on the page. Remember, if you circle "professional" the page should reflect only those titles classified as professionals.

You must use separate pages of Form A for each occupational category. You should photocopy as many forms as you need to report all of the titles.

Occupational Category

List and classify each company job title which exists in the reported facility. In selecting the appropriate occupational category for each job title please note that the occupational categories listed in abbreviated form at the upper right corner reflect the eleven (11) occupational categories utilized in the 1990 Census. These occupational categories are listed in Appendix B (page 22) and appear as italicized headings within the parenthesis above each group of occupational titles listed in Appendix B. Be sure you are using the correct occupational category when selecting the category in Appendix B that most closely corresponds to your company job titles.

Company Job Title

Column 1: List all job titles which fall within the category circled. (These are titles, not census codes, occupational categories or specific people).

**If you have an unusual company job title which you are unable to place within an occupational category, please fill out the job description form and DLS will classify the job title for you.**

If two job titles have similar pay rate, opportunity and responsibility, they may be checked off in the same job group. But you may not skip a job group within an occupational category. The rankings in each occupational category must begin with Job Group 1, then Job Group 2, and so on. It is not necessary to reach Job Group 5, and in fact most small and medium-sized organizations do not.

Under limited circumstances will DLS allow more than five job groups to be established in an occupational category, but in no instance will more than ten job groups be allowed. If you believe that more than five job groups in any occupational category is absolutely necessary, please call DLS and ask for assistance.

Incumbents

Column 5: Record the total number of your current employees by job title.

Columns 6-15: Distribute by sex and minority status (see below), the total number of incumbents in each job title. Add the totals in column 5 for the entire occupational category (e.g., Managers) and place the resulting number in the box at the top left hand corner of the page. If there are no incumbents in an occupational category, you must report zero (0).

"Minority," "Minorities," or "Minority Group" means Black, Hispanic (non-European), Asian, and Native American (American Indian, Eskimo, Aleut). These groups are defined as follows:

Black: descended from any of the Black African racial groups and not of Spanish origin;

Hispanic: of Mexican, Puerto Rican, Cuban, Dominican, Central or South American Spanish origin or culture regardless of race;

Asian or Pacific Islander: descended from any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

Native American, Alaskan Native: descended from any of the original peoples of North America or Alaska and maintaining identifiable tribal affiliation through membership and participation or community recognition.

The incumbents reported should reflect a snapshot of your workforce as of the date your Employment Report was completed.

FORM B: NEW HIRES FORM/TRACKING EMPLOYEES HIRED OVER THE LAST THREE YEARS

The New Hires Form calls for information concerning only those employees hired over the last three years, *including those who are no longer with your firm.*

If any required information is unavailable, please contact the city agency with which you are contracting (contracting agency). If you are contracting through the Department of General Services/Division of Municipal Supplies, you must contact the Division of Labor Services directly.

Social Security No. or Employee ID No.

Column 1: Write the social security number or employee ID number of all employees hired. Each permanent ID number must be employee specific.

### Sex and Race/Ethnic Code

Column 2: Using the codes at the bottom of the form, fill in the sex and race of each employee listed in column

Column 3: "Minority," "Minorities," or "Minority Group" means: Black, Hispanic (non-European), Asian, and Native American (American Indian, Eskimo, Aleut). These groups are defined on above.

### Year of Hire

Column 4: Enter year of hire for each employee hired within the past three years.

If there are no "new hires" for one or more of the past three years, please indicate this at the certification box located below the legends.

### Company Job Number at Hire

Column 5: List the company job number (Form A, Column 2) for the title in which the employee was hired.

All company job numbers utilized on this form must be reported on Form A, even if the job title that the job number represents no longer exists. If a company number is listed as a three digit number on the job classification and incumbents form (i.e. 006), that precise three digit number must be utilized in this column and in column eight. Do not substitute "6" for "006".

### Matching Census Code

Column 6: Refer to the census codes which were assigned to the job titles on Form A. List the census code assigned to the company job title into which the employee was hired.

If the same company job number is listed more than once in Column 5, the same census code must be assigned each time that company job number is reported.

Where applicable, the same census code may be assigned to different company job numbers. For example, job titles senior accountant and junior accountant may both be assigned detailed census code 023 (accountants and auditors).

If you are unable to find a suitable census code match for one or more of your company job titles, fill in the Job Description Form Employment Report, page 14) and DLS will match it to a census code.

### Weekly Salary at Hire

Column 7: Report the weekly salary of each employee listed at hire. If not weekly, salaries must still be listed in a uniform manner (i.e., monthly salaries instead of weekly).

### Current Company Job Number

Column 8: Enter the current company job number of each employee listed. This may or may not be a change from Column 5, depending on whether there was a change in job title (promotion, transfer, demotion) for the employee.

If any employee listed as a new hire is no longer with your firm, place an "I" in this column if the employee was discharged or laid off, a "V" if the employee resigned, an "R" if the employee retired and a "D" if the employee is deceased.

Remember that all company job numbers utilized on this form must have been reported on Form A.

Weekly Current Salary

Column 9: Enter the current salary of each employee listed. This may or may not be a change from Column 7. This salary must be reported in the same uniform manner (i.e. weekly, monthly) as Column 7.

If any employee listed is no longer with your firm, place an "I", "V", "R", or a "D" in this column as appropriate.

FORM C: TERMINATIONS FORM/EMPLOYMENT TERMINATIONS OVER THE LAST THREE YEARS

The Terminations Form calls for information concerning only those employees whose employment terminated over the last three years. If no termination occurred in any of the past three years, indicate this fact in the certification box.

If any required information is unavailable, please contact the city agency with which you are contracting (contracting agency). If you are contracting through the Department of General Services/Division of Municipal Supplies, you must contact the Division of Labor Services directly.

Social Security No. or Employee ID No.

Column 1: Write the social security number or other permanent employee ID number for each employee listed. Each permanent ID number utilized must be employee specific.

Please be sure that all employees listed on the "New Hires Form" as terminated (with a "V", "R", "I" or "D" in columns 8 and 9) are consistently reported on this Form.

Sex and Race/Ethnic Code

Column 2: Using the codes at the bottom of the form fill in the sex and race of each employee listed in column

Column 3: "Minority," "Minorities", or "Minority Group" means: Black, Hispanic (non-European), Asian, and Native American (American Indian, Eskimo, Aleut). These groups are defined above.

Age at Termination

Column 4: Indicate the age of each employee listed. Please do not give birth dates.

Year of Hire

Column 5: If any employee listed on this form was rehired, enter the year of last hire.

Last Company Job Number

Column 6: Enter the last company job number assigned to terminees (this number must be from the job numbers assigned on Form A, column 2).

All company job numbers utilized on this form must be reported on the Form A, even if the title and number no longer exist.

Year of Termination

Column 7: Indicate the year of employee's termination.

Type of Termination

Column 8: Indicate the type of termination by placing an "I" in this column if the employee was discharged or laid off, a "V" if the employee resigned, an "R" if the employees retired or a "D" if the employee is deceased.

Remember that all company job numbers utilized on this form must have been reported on Form A.

**SIGNATURE PAGE**

The signatory of this Employment Report and all other documents submitted to DLS must be an official authorized to enter into a binding legal agreement. The signature page must be completed in its entirety and notarized. Only original signatures will be accepted.

**SUPPLY AND SERVICES EMPLOYMENT REPORT**

**GENERAL INFORMATION**

- 1. Your contractual relationship in this contract is:  
Prime contractor \_\_\_\_\_ Subcontractor \_\_\_\_\_
  
- 2. This Employment Report is for:  
Headquarters \_\_\_\_\_ Operating Facility \_\_\_\_\_
  
- 3. Would your firm like information on how to certify with the City of New York as a:  
  
 Minority Owned Business Enterprise                       Locally based Business Enterprise  
 Women Owned Business Enterprise                       Emerging Business Enterprise  
 Disadvantaged Business Enterprise
  
- 3a. If you are certified as an **MBE, WBE, LBE, EBE** or **DBE**, what city/state agency are you certified with? \_\_\_\_\_ Are you DBE certified? Yes \_\_\_\_\_ No \_\_\_\_\_
  
- 4. Please indicate if you would like assistance from SBS in identifying certified M/WBEs for contracting opportunities: Yes \_\_\_\_\_ No \_\_\_\_\_
  
- 5. Are you a Union contractor? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please list which local(s) you affiliated with \_\_\_\_\_
  
- 6. Are you a Veteran owned company? Yes \_\_\_\_\_ No \_\_\_\_\_

**PART I: CONTRACTOR/SUBCONTRACTOR INFORMATION**

- 7. \_\_\_\_\_  
Employer Identification Number or Federal Tax I.D./                      E-mail Address
  
- 8. \_\_\_\_\_  
Company Name
  
- 9. \_\_\_\_\_  
Facility Address and Zip Code
  
- 10. \_\_\_\_\_  
Chief Operating Officer                      Telephone Number
  
- 11. \_\_\_\_\_  
Designated Equal Opportunity Compliance Officer                      Telephone Number  
(Or name of person to contact concerning this report)

12. \_\_\_\_\_  
Name of Prime Contractor and Contact Person  
(If same as Item #8, write "same")

13. Number of employees at this facility (location): \_\_\_\_\_

14. Industry code: \_\_\_\_\_

15. Contract information:

(a) \_\_\_\_\_  
Contracting Agency (City Agency)

(b) \_\_\_\_\_  
Contract Amount

(c) \_\_\_\_\_  
Procurement Identification Number (PIN)

(d) \_\_\_\_\_  
Contract Registration Number (CT#)

(e) \_\_\_\_\_  
Projected Commencement Date

(f) \_\_\_\_\_  
Projected Completion Date

(g) Description of contract:  
\_\_\_\_\_  
\_\_\_\_\_

16. List each of the firm's facilities, with addresses and the number of employees where this contract or parts of this contract will be performed. See instructions.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Is any or part of this contract, in an amount exceeding \$100,000 to be performed by a subcontractor? Yes\_\_\_ No\_\_\_ Not known at this time\_\_\_

If yes, please submit list the name(s) and address(es) of the subcontractor(s), and either attach a copy of their Employment Report(s) or have them submit directly to the contracting agency. If subcontractors are unknown at this time, see the instructions for subcontractor submissions.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. Has the Division of Labor Services (DLS) within the past 36 months issued a Certificate of Approval or Administrative Certificate of Compliance to your firm for the facility(ies) involved in the performance of this contract? Yes\_\_\_ No\_\_\_

If yes, attach a copy of certificate.

19. Has DLS within the past three months reviewed an Employment Report submission for your firm and issued a Conditional Certificate of Approval or a Conditional Administrative Certificate of Compliance? Yes\_\_\_ No\_\_\_

If yes, attach a copy of certificate.

**NOTE: DLS WILL NOT ISSUE A CONTINUED CERTIFICATE OF APPROVAL IN CONNECTION WITH THIS CONTRACT UNLESS THE REQUIRED CORRECTIVE ACTIONS IN PRIOR CONDITIONAL CERTIFICATES OF APPROVAL HAVE BEEN TAKEN.**

20. Has an Employment Report already been submitted for a different contract (not covered by this Employment Report) for which you have not yet received compliance certificate and includes the facility(ies) listed here? Yes\_\_\_ No\_\_\_

If yes,

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

Agency to which submitted: \_\_\_\_\_

Name of Agency Person: \_\_\_\_\_

Contract No: \_\_\_\_\_

Telephone: \_\_\_\_\_

21. Has your company in the past 36 months been audited by the United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP)? Yes\_\_\_ No\_\_\_

If yes,

(a) Name and address of OFCCP office.

\_\_\_\_\_  
\_\_\_\_\_

- (b) Was a Certificate of Equal Employment Compliance issued within the past 36 months? Yes\_\_\_ No\_\_\_

If yes, attach a copy of such certificate.

- (c) Were any corrective actions required or agreed to? Yes\_\_\_ No\_\_\_

If yes, attach a copy of such requirements or agreements.

- (d) Were any deficiencies found? Yes\_\_\_ No\_\_\_

If yes, attach a copy of such findings.

22. Is your company or its affiliates a member or members of an employers' trade association which is responsible for negotiating collective bargaining agreements (CBA) which affect construction site hiring? Yes\_\_\_ No\_\_\_

If yes, attach a list of such associations and all applicable CBA's.

**PART II: DOCUMENTS REQUIRED**

23. For the following policies or practices, attach the relevant documents (e.g., printed booklets, brochures, manuals, memoranda, etc.). If the policy(ies) are unwritten, attach a full explanation of the practices. See instructions.

- (a) Health benefit coverage/description(s) for all management, nonunion and union employees (whether company or union administered)
- (b) Disability, life, other insurance coverage/description
- (c) Employee Policy/Handbook
- (d) Personnel Policy/Manual
- (e) Supervisor's Policy/Manual
- (f) Pension plan or 401k coverage/description for all management, nonunion and union employees, whether company or union administered
- (g) Collective bargaining agreement(s).
- (h) Employment Application(s)
- (i) Employee evaluation policy/form(s).
- (j) Does your firm have medical and/or non-medical (i.e. education, military, personal, pregnancy, child care) leave policy?

24. To comply with the Immigration Reform and Control Act of 1986 when and of whom does your firm require the completion of an I-9 Form?

- (a) Prior to job offer Yes\_\_\_ No\_\_\_
- (b) After a conditional job offer Yes\_\_\_ No\_\_\_
- (c) After a job offer Yes\_\_\_ No\_\_\_
- (d) Within the first three days on the job Yes\_\_\_ No\_\_\_
- (e) To some applicants Yes\_\_\_ No\_\_\_
- (f) To all applicants Yes\_\_\_ No\_\_\_
- (g) To some employees Yes\_\_\_ No\_\_\_
- (h) To all employees Yes\_\_\_ No\_\_\_

25. Explain where and how completed I-9 Forms, with their supportive documentation, are maintained and made accessible.

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26. Does your firm or any of its collective bargaining agreements require job applicants to take a medical examination? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, is the medical examination given:

- (a) Prior to a job offer Yes\_\_\_ No\_\_\_
- (b) After a conditional job offer Yes\_\_\_ No\_\_\_
- (c) After a job offer Yes\_\_\_ No\_\_\_
- (d) To all applicants Yes\_\_\_ No\_\_\_
- (e) Only to some applicants Yes\_\_\_ No\_\_\_

If yes, list for which applicants below and attach copies of all medical examination or questionnaire forms and instructions utilized for these examinations.

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27. Do you have a written equal employment opportunity (EEO) policy? Yes\_\_\_ No\_\_\_

If yes, list the document(s) and page number(s) where these written policies are located.

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28. Does the company have a current affirmative action plan(s) (AAP)?

If yes, for which of the following groups?

\_\_\_ Minorities and Women

\_\_\_ Individuals with handicaps

\_\_\_ Other. Please specify \_\_\_\_\_

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29. Does your firm or collective bargaining agreement(s) have an internal grievance procedure with respect to EEO complaints? Yes\_\_\_ No\_\_\_

If yes, please attach a copy of this policy.

If no, attach a report detailing your firm's unwritten procedure for handling EEO complaints.

30. Has any employee, within the past three years, filed a complaint pursuant to an internal grievance procedure or with any official of your firm with respect to equal employment opportunity? Yes\_\_\_ No\_\_\_

If yes, attach an internal complaint log. See instructions.

31. Has your firm, within the past three years, been named as a defendant (or respondent) in any administrative or judicial action where the complainant (plaintiff) alleged violation of any anti-discrimination or affirmative action laws? Yes\_\_\_ No\_\_\_

If yes, attach a log. See instructions.

32. Are there any jobs for which there are physical qualifications? Yes\_\_\_ No\_\_\_

If yes, list the job(s), submit a job description and state the reason(s) for the qualification(s).

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33. Are there any jobs for which there are age, race, color, national origin, sex, creed, disability, marital status, sexual orientation, or citizenship qualifications? Yes\_\_\_ No\_\_\_

If yes, list the job(s), submit a job description and state the reason(s) for the qualification(s).

---

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34. Please check below whether the following policies and practices apply to the job categories listed:

Job Category	Job Description	Promote from Within	External Hire	Job Posting	On-the-Job Training
Managers					
Professional					
Technicians					
Sales Worker					
Clericals					
Operatives/Laborers					
Service Workers					

35. **FOR CONTRACTORS EMPLOYING 150 OR MORE EMPLOYEES:** Please indicate below the relevant geographic recruitment or labor market area(s) (i.e. nation, specific county or specific metropolitan, statistical area) for each job category employed at this facility.

Job Category	Relevant Geographic Recruitment or Labor Market Area(s)
Managers	
Professional	
Technicians	
Sales Worker	
Clericals	
Operatives/Laborers	
Service Workers	

**IF YOU EMPLOY LESS THAN 150 EMPLOYEES:** Please indicate below. Contractors with less than 150 employees do not need to complete Part III.

I certify that there are fewer than 150 people at the facilities listed in this Employment Report.

**SIGNATURE PAGE**

I, (print name of authorized official signing) \_\_\_\_\_ hereby certify that the information submitted herewith is true and complete to the best of my knowledge and belief and submitted with the understanding that compliance with New York City's equal employment requirements, as contained in Chapter 56 of the City Charter, Executive Order No. 50 (1980), as amended, and the implementing Rules and Regulations, is a contractual obligation.

\_\_\_\_\_  
Contractor's Name

\_\_\_\_\_  
Name of person who prepared this Employment Report Title

\_\_\_\_\_  
Name of official authorized to sign on behalf of the contractor Title

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature of authorized official Date

Willful or fraudulent falsifications of any data or information submitted herewith may result in the termination of the contract between the City and the bidder or contractor and in disapproval of future contracts for a period of up to five years. Further, such falsification may result in civil and/or criminal prosecution.

To the extent permitted by law and consistent with the proper discharge of DLS' responsibilities under Charter Chapter 56 of the City Charter and Executive Order No. 50 (1980) and the implementing Rules and Regulations, all information provided by a contractor to DLS shall be confidential.

**Only original signatures accepted.**

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public Authorized Signature Date





**FORM C: TERMINATIONS FORM EMPLOYMENT TERMINATIONS OVER THE LAST THREE YEARS**

CONTRACTOR NAME \_\_\_\_\_

FACILITY LOCATION \_\_\_\_\_

(1) Social Security No. or Employee ID No.	(2) Sex (a)	(3) Race Ethnic Code (b)	(4) Age at Termination	(5) Year of Hire	(6) Last Company Job Number	(7) Year of Termination	(8) Type of Termination(d)

(a)

**M:** Male  
**F:** Female

(b)

**W:** White(non-Hisp)  
**B:** Black(non-Hisp)  
**H:** Hispanic  
**A:** Asian  
**N:** Native American

(c)

See listing of occupational categories

(d)

**V:** Voluntarily terminated employment (Resigned)  
**I:** Involuntarily terminated employment (Discharged/Lay off)  
**R:** Retired  
**D:** Deceased

I certify that there were no terminations in 20\_\_\_\_/20\_\_\_\_

**NOTE:** Make as many copies of this form as you require.





The City of New York Department of Small Business Services  
Division of Labor Services Contract Compliance Unit  
110 William Street, New York, New York 10038  
Phone: (212) 513 – 6323  
Fax: (212) 618-8879

Date \_\_\_\_\_

File Number \_\_\_\_\_

**LESS THAN 50 EMPLOYEES CERTIFICATE**  
(Supply and Services Contracts Only)

Your contractual relationship in this contract is: Prime contractor \_\_\_\_\_ Subcontractor \_\_\_\_\_

Are you currently certified as one of the following? Please check yes or no:

MBE Yes \_\_\_ No \_\_\_      WBE Yes \_\_\_ No \_\_\_      LBE Yes \_\_\_ No \_\_\_

DBE Yes \_\_\_ No \_\_\_      EBE Yes \_\_\_ No \_\_\_

If you are certified as an MBE, WBE, LBE, EBE or DBE, what city/state agency are you certified with?

\_\_\_\_\_

Please check one of the following if your firm would like information on how to certify with the City of New York as a:

\_\_\_ Minority Owned Business Enterprise

\_\_\_ Locally based Business Enterprise

\_\_\_ Women Owned Business Enterprise

\_\_\_ Emerging Business Enterprise

\_\_\_ Disadvantaged Business Enterprise

Company Name

Employer Identification Number or Federal Tax I.D

Company Address and Zip Code

E-Mail Address

Chief Operating Officer

Telephone Number

Prime Contractor (if Subcontractor)

Contact Person

Contracting Agency

Description of proposed contract: \_\_\_\_\_

\_\_\_\_\_

Are you a Union contractor? Yes \_\_\_ No \_\_\_ If yes, please list which local(s) you affiliated with

\_\_\_\_\_

Are you a Veteran owned company? Yes \_\_\_ No \_\_\_

\_\_\_\_\_  
Procurement Identification Number (PIN)

\_\_\_\_\_  
Contract Registration Number (CT#)

\_\_\_\_\_  
Block and Lot Number  
(ICIP/ICAP projects only)

\_\_\_\_\_  
Contract Amount

I, (print name of authorized official signing) \_\_\_\_\_ hereby certify that I am authorized by the above-named contractor to certify that said contractor currently employs \_\_\_\_\_ people. This affirmation is made in accordance with NYC Charter Chapter 56, Executive Order No. 50 (1980) and the implementing Rules.

Willful or fraudulent falsifications of any data or information submitted herewith may result in the termination of the contract between the City and the bidder or contractor and in disapproval of future contracts for a period of up to five years. Further, such falsification may result in civil and/or criminal prosecution.

\_\_\_\_\_  
Signature of authorized official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Only original signatures accepted.**

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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

\_\_\_\_\_  
Date

**APPENDIX IV**

**NOTICE TO BIDDERS  
PAYEE INFORMATION PORTAL (PIP)**

## NOTICE TO BIDDERS

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at [www.nyc.gov/pip](http://www.nyc.gov/pip). In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at [pip@fisa.nyc.gov](mailto:pip@fisa.nyc.gov).

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Construction Contract and PPB Rule § 4-13 Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

**APPENDIX V**

**EFT VENDOR PAYMENT FORM**



# Direct Deposit/Electronic Funds Transfer (EFT) ENROLLMENT/CHANGE OF ACCOUNT FORM

## INSTRUCTIONS

- For more information about EFT, to contact us, or to download an application, go to [nyc.gov/efit](http://nyc.gov/efit)
- If sending by mail, please do not staple
- If submitting multiple enrollments by E-Fax, each individual application must be faxed separately
- **Form must be typed and submitted to:**

**E-Fax:** (646) 500-7152 **Or**

**Mail:** NYC Department of Finance, Treasury Division  
66 John Street, 12th Floor, New York, NY 10038, Attention: EFT

## SECTION 1 - APPLICATION REQUIREMENT (REQUIRED ITEM)

Submit **one** item with your application.  
Incomplete applications will not be processed.

- Copy of voided check imprinted with vendor name
- Current bank statement       Letter from your bank\*

\*Bank documentation must contain the vendor/company name, complete bank account and routing number. Bank documentation must also include bank representative's signature, printed name, and date signed.

## SECTION 2 - VENDOR INFORMATION (ALL FIELDS REQUIRED)

1. Social Security # or Taxpayer ID #: <i>(As it appears on W-9 Form)</i>	
2. Vendor Name: <i>(As it appears on W-9 Form)</i>	
3. Vendor Address: <i>Number, Street, City, State and Zip Code</i>	
4. Vendor Email Address:	
5. Vendor Telephone Number and Extension:	

## SECTION 3 - BANK INFORMATION (ALL FIELDS REQUIRED)

1. Name of Bank:		
2. Name of Account: <i>(Exactly as it appears on Account)</i>		
3. Account Number and Type:	<input type="checkbox"/> CHECKING	<input type="checkbox"/> SAVINGS
4. 9-Digit Bank Routing Number: <i>(See bottom of check)</i>		
5. Bank Telephone Number and Extension:		

## SECTION 4 - VENDOR SIGNATURE AND AUTHORIZATION (MUST SIGN, PRINT AND DATE)

I, hereby confirm my authority, as an authorized signer of the above-referenced bank account ("Account"), to issue this instruction to credit and debit, via the Automated Clearinghouse, the Account. I authorize the City of New York to deposit, via Automated Clearinghouse credit entry, all entitled payments to the Account and to initiate, as necessary, Automated Clearinghouse debit entries to adjust any Automated Clearinghouse credit (i) made in error (ii) deposited for an incorrect amount, or (iii) that is a duplicate of a correct payment. The City of New York will make a reasonable effort to communicate with me to notify me of a debit entry that will be made to the Account. I understand that this authorization will remain in effect until a written instruction, properly executed by me, authorizing cancellation is submitted to the fax number above.

<b>Authorized Signature</b>	<b>Print/Type Name</b>	<b>Date (MM-DD-YYYY)</b>

**APPENDIX VI**

**IRAN DIVESTMENT ACT COMPLIANCE RIDER**

**IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR  
NEW YORK CITY CONTRACTORS**

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law ("SFL") §165-a and General Municipal Law ("GML") §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

**Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:**

**(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or**

**(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.**



**APPENDIX VI**

**WHISTLEBLOWER PROTECTION EXPANSION ACT**

## WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
  - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
  - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
- (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

- (e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.



## REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

**Department of Investigation (DOI) Complaint Bureau**  
**212-825-5959**

**or by mail or in person at:**

**DEPARTMENT OF INVESTIGATION**  
**80 MAIDEN LANE, 17th FLOOR**  
**NEW YORK, NEW YORK 10038**  
**Attention: COMPLAINT BUREAU**

**or file a complaint on-line at:**

[www.nyc.gov/doi](http://www.nyc.gov/doi)

*All communications are confidential.*

## THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.



**APPENDIX VIII**

**HIRING AND EMPLOYMENT CONTRACT RIDER**

### **Compliance with HireNYC and Reporting Requirements**

The Hiring and Employment Rider shall apply to contracts valued at \$1 million or more for all goods, services and construction except human services contracts that are subject to the Public Assistance Hiring Commitment Rider. The Rider describes the Hire NYC process and obligations, including reporting requirements throughout the life of the contract. The Hire NYC process requires contractors to enroll with the Hire NYC system within thirty days after the registration of the contract subject to this solicitation, to provide information regarding all entry to mid-level job opportunities arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities. The Rider also includes reporting requirements unrelated to HireNYC.

**HIRING AND EMPLOYMENT RIDER:**  
**HIRENYC AND REPORTING REQUIREMENTS**

**Introduction**

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’s (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

**HireNYC Requirements**

A. Enrollment

The Contractor shall enroll with the HireNYC system, found at [www.nyc.gov/sbs](http://www.nyc.gov/sbs), within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor ([see Column F of https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls](https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls)). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process,

and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

### C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

### **Audit Compliance**

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

## **Other Reporting Requirements**

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

## **Construction Requirements**

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

## **Federal Hiring Requirements**

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

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**THE CITY OF NEW YORK  
DEPARTMENT OF HOMELESS SERVICES  
HUMAN RESOURCES ADMINISTRATION  
DEPARTMENT OF SOCIAL SERVICES**

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**CONTRACT FOR FURNISHING ALL  
LABOR AND MATERIAL NECESSARY  
AND REQUIRED FOR:**

E-PIN#:09620B0002

PIN#: 19BPESR01801

SCOPE: PRE-EMPLOYMENT MEDICAL EXAMINATION FOR PEACE OFFICERS  
LOCATION: MANHATTAN  
PERIOD OF PERFORMANCE: THIRTY SIX (36) MONTHS FROM DATE OF REGISTRATION

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.....  
**Contractor**

**Dated:**.....

**Assigned to**.....

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**APPROVED AS TO FORM**

.....  
**Acting Corporation Counsel**

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**Dated**.....**20**.....

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**EXAMINED AND FOUND CORRECT**

.....  
**Contract Clerk  
Comptroller**

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**Entered in the Comptroller's Office.**

**Dated**.....**20**.....

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**First Assistant Bookkeeper**

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