

City of New York
DEPARTMENT OF CORRECTION



For the Services of:

FOR FURNISHING ALL LABOR AND MATERIAL NECESSARY AND REQUIRED FOR:

**PER DIEM NURSES FOR AN EXPANDED INFECTION CONTROL PROGRAM
FOR THE SCREENING OF TUBERCULOSIS, HEPATITIS IMMUNIZATIONS,
FLU VACCINE, RESPIRATORY PROTECTION AT VARIOUS NYC
DEPARTMENT OF CORRECTION FACILITIES.**

Procurement Identification Number

PIN: 072201744HMD

EPIN: 07217B0017

Commissioner
Joseph Ponte

INVITATION FOR BIDS

**THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION
PROFESSIONAL SERVICES CONTRACT**

FOR FURNISHING ALL LABOR AND MATERIAL NECESSARY AND REQUIRED FOR:

**PER DIEM NURSES FOR AN EXPANDED INFECTION CONTROL PROGRAM FOR
THE SCREENING OF TUBERCULOSIS, HEPATITIS IMMUNIZATIONS, FLU
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PROCUREMENT IDENTIFICATION NUMBER (PIN): 072201744HMD EPIN: 07217B0017

NOTICE TO BIDDERS: (Instructions)

This bid document book is organized into Parts A - F, so that bidders can easily access information about the bid, the contract and related bid forms in an ordered sequence.

PART A: INFORMATION FOR BIDDERS

PART B: BID FORMS AND RELATED DOCUMENTS

PART C: DETAILED SPECIFICATIONS DESCRIBING SCOPE OF WORK

PART D: TERMS OF CONTRACT

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PART A: INFORMATION FOR BIDDERS

DEPARTMENT OF CORRECTION

The pages in each Part of this document are numbered consecutively. Prospective Bidders must examine the documents carefully. Before bidding, prospective Bidders must notify the agency contact person listed in Section 7 below, in writing, if pages are missing and request that these missing pages be furnished to them.

1. DESCRIPTION OF PROCUREMENT

A. The description and location of the services to be performed are as follows:

Per Diem Nurses for an Expanded Infection Control Program for Tuberculosis Screening, Hepatitis Immunizations, Flu Vaccine, Respiratory Protection at various NYC Department of Correction Facilities.

B. The term for this service is: 1095 Consecutive Calendar Days.

2. TIME AND PLACE FOR RECEIPT OF BIDS

A. The Department shall receive all sealed bids at the following location on or before the date and time set forth below:

New York City Department of Correction
Central Office of Procurement
75-20 Astoria Blvd., Suite 160, Conf. Rm. 160
East Elmhurst, New York 11370

DATE: July 25, 2017 .
TIME: 11:00A.M. (*bid opening*)

B. It is the Bidder's responsibility to assure that its bid is received at the bid location on or before the date and time of the scheduled bid opening and that the bid and all other documents requiring signature are signed and notarized.

C. The completed bid must be submitted in a sealed envelope on or before the time and at the place indicated above. The envelope must indicate:

- (1) The name of the person, firm or corporation presenting the bid;**
- (2) The bid opening date;**
- (3) The PIN number; and**
- (4) The bid title.**

D. Failure to comply with the instructions in this Section 2 may result in rejection of the bid.

3. **PROCUREMENT POLICY BOARD RULES**

This Bid document is subject to the Rules of the Procurement Policy Board of the City of New York (“PPB Rules”) effective September 1, 1990, as amended from time to time. In the event of a conflict between said Rules and a provision of any of these bid documents, then the Rules shall take precedence. A copy of the rules may be obtained by contacting the agency contact person for this project, or online at <http://www.nyc.gov/html/mocs/ppb/html/home/home.shtml>

4. **DEFINITIONS**

The definitions set forth in the PPB Rules shall apply to this bid document.

5. **BID DOCUMENTS**

A. **Documents to be Included.** Except for titles, sub-titles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of the Contract and the bid documents.

- (1) The Advertisement for Bids;
- (2) The Information for Bidders;
- (3) The Bid;
- (4) The Contract;
- (5) The Procurement Policy Board Rules;
- (6) The Specifications and Description of the Work;
- (7) The Contract Drawings;
- (8) All addenda issued by the Department, regarding this request for bids, prior to the receipt of bids;
- (9) All provisions required by law to be inserted in this Contract, whether actually inserted or not;
- (10) Notice of Award;
- (11) Insurance Documents;
- (12) Performance and Payment Bonds; and
- (13) Notice to Proceed with Work (*Also known as the Commence Work Letter*).

- B. **General Conditions and Specifications.** 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 bid material, the Detailed Specifications/Scope of Work and the General Condition Parts, which are attached to these bid documents.
- C. **Deposit for Copy of the Bid Documents.** Prospective Bidders may obtain a copy of the bid documents by complying with the conditions set forth in the Advertisement for Bids. A Bid Book deposit is \$25 Dollars, must be in the form of a **money order** or a **certified check**, made payable to the order of the **Commissioner of Finance**, and drawn 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.
- D. **Additional Copies.** Additional copies of the bid documents may be obtained, subject to the conditions set forth in the advertisement for bids.

6. **PRE-BID CONFERENCE**

- A. The Department shall hold a pre-bid conference on the date and time and at the location set forth below:

TIME: 11:00A.M.
DATE: July 13, 2017
PLACE: Bulova Corporate Center
Central Office of Procurement, Suite 160
75-20 Astoria Boulevard
East Elmhurst, NY 11370

- B. Bidder attendance at this pre-bid conference is:
Mandatory [] Optional [X] **But Highly Recommended.**

Failure to attend a mandatory pre-bid conference shall be grounds for rejection of a bid.

- C. Nothing stated at the pre-bid conference shall change the terms and conditions of the bid documents unless a change is made by a written amendment as provided in Section 8 below and in accordance with the PPB Rules.
- D. Please notify the agency contact person listed in Section 7 below of the number of representatives from your firm that will attend the pre-bid conference when the bid solicitation documents are picked up.

7. **AGENCY CONTACT**

The agency contact person for this bid shall be:

NAME: Janell Cleary
TITLE: Contract Manager
ADDRESS: 75-20 Astoria, Blvd., Suite 160
East Elmhurst, New York 11370
PHONE: (718) 546-0682
FAX NO: (718) 278-6205

Any questions or correspondence relating to this bid solicitation shall be addressed to the agency contact person.

8. **EXAMINATION OF PROPOSED CONTRACT**

A. **Request for Interpretation or Correction.** Prospective Bidders must examine the Contract documents carefully and before bidding must request the ACCO in writing for an interpretation or correction of every patent or latent 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 ACCO may decide to include, will be issued in writing by the ACCO 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 Agency Contact, 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.

B. **Only the Agency Chief Contracting Officer's Interpretation or Correction Binding.** Only the written interpretation or correction given by the ACCO 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.

9. **FORM OF BID**

A. Part B consists of the prescribed forms that must be submitted and must contain:

- (1) The name, residence and place of business of the person(s) making the bid;
- (2) The name of all persons interested therein, and if no other person is so interested, such fact must be distinctly stated;
- (3) A statement to the effect that it is made without any connection with any other person making a bid for the same purpose and that it is in all respects fair and without collusion or fraud;

- (4) A statement that no Council Member or other officer, employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested therein or in the supplies, materials or equipment and work or labor to which it relates, or in any portion of the profits thereof;
- (5) A statement that the Bidder is not in arrears to the City or to any agency upon a debt, contract or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City or to any agency thereof, except as set forth in the bid.

10. BIDDER'S OATH

- A. The bid shall be properly signed by an authorized representative of the Bidder and 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.
- B. 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.
- C. Documents given to a subcontractor for the purpose of soliciting the subcontractor's bid shall include either a copy of the bid cover or a separate information sheet setting forth the project name, the contract number (if available), the contracting agency, and the project location.

11. SITE VISIT

- A. **There is no site visit for this bid.**
- B. Changed Conditions: Should the Contractor encounter during the progress of the work, subsurface conditions at the site materially differing from any shown on the Contract Drawings or as indicated in the specifications, or such subsurface conditions as could not reasonably have been anticipated by the Contractor and were not anticipated by the City, which conditions will materially affect the cost of the work to be done under the Contract, Contractor must notify the Commissioner immediately and before any such conditions are disturbed. If the Commissioner finds that the conditions do so materially differ, or that they could not reasonably have been anticipated by the Contractor and were not anticipated by the City, the Contract may be modified with the Commissioner's written approval.

12. 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 16 and 19 below.

13. ACKNOWLEDGMENT OF AMENDMENTS

The receipt of any amendment to the Contract documents shall be acknowledged by the Bidder in its bid submission.

14. 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 which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of this Contract.

15. PROPRIETARY INFORMATION/TRADE SECRETS

A. The Bidder shall identify those portions of its bid that it deems to be confidential, or include proprietary information or trade secrets, and shall provide justification why such materials should not be disclosed by the City. The Bidder shall clearly indicate all materials the Bidder desires to remain confidential 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.

B. All such materials so indicated shall be reviewed by the Department and any decision not to honor a request for confidentiality shall be communicated in writing to the Bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the Bidder. Prices, makes, models 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.

16. PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

A. A bid may be modified or withdrawn by written notice, received and signed for by the designated agency contact person in Part A, Paragraph 7, at the Central Office of Procurement, 75-20 Astoria Blvd., Suite 160, East Elmhurst, New York 11370, before the time and date set for the bid opening.

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

17. BID EVALUATION AND AWARD

A. In accordance with the New York City Charter, the PPB Rules and the terms and conditions of the bid documents, this Contract shall be awarded, if at all, to the responsible Bidder whose bid meets the requirements and evaluation criteria set forth in the bid documents, and whose bid price is either the lowest responsive and responsible bid price, or, if the bid documents so state, the lowest responsive and responsible evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the bid documents.

B. No negotiations with any bidder shall be allowed to take place except under circumstances and in the manner set forth below. Nothing in this Section shall be deemed to permit a Contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bid if that bid is not also the most favorable bid.

- C. Upon determination of the apparent lowest responsive and responsible bidder and prior to award, the ACCO may elect to open negotiations with the selected bidder 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 the PPB Rules.

18. LATE BIDS, LATE WITHDRAWAL 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.

19. WITHDRAWAL OF BIDS

- A. Except as provided for in Section 16 above, a Bidder may not withdraw its bid before the expiration of forty-five (45) days after the date of opening of bids; thereafter, a Bidder may withdraw its bid only in writing and in advance of an actual award.
- B. If within sixty (60) days after the execution of the Contract, the Commissioner fails to fix the date for commencement of work by written notice to the Bidder, the Bidder, at its option, may ask to be relieved of its obligation to perform the work called for by written notice to the Commissioner. If such notice is given, and the request to withdraw is granted, the Bidder waives all claims in connection with this Contract.

20. MISTAKES IN BIDS

- A. Mistakes 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 16 above.
- B. Mistakes Discovered Before Award: In accordance with the PPB Rules, if a Bidder alleges a mistake in its bid after bid opening and before award, the bid may be corrected or withdrawn upon written approval of the ACCO if the following conditions are met:
 - (1) Minor Informalities. Minor informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be corrected without prejudice to other Bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The ACCO may waive such informalities or allow the Bidder to correct them depending on which is in the best interest of the City.
 - (2) 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.

- (3) 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 ACCO makes the following determination:
- (a) the mistake was known or made known to the agency prior to bidder selection or within three days after the opening of the bid, whichever period is shorter;
 - (b) the price bid was based on an error of such magnitude that enforcement would be unconscionable;
 - (c) 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;
 - (d) 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
 - (e) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.
- A. Upon the approval of the ACCO, 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 re-solicited pursuant to the PPB Rules. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.
- B. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the Contract except where the ACCO, subject to the approval of City Chief Procurement Officer (CCPO), makes a determination that it would be unconscionable not to allow the mistake to be corrected.
- C. 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 the PPB Rules.

21. TIED LOW BIDS

- A. When two (2) or more low responsive bids from responsible Bidders are identical in price, meeting all the requirements and criteria set forth in the bid documents, the ACCO will break the tie in the following manner in order of priority:

- (1) Award to a certified New York City small, minority or woman-owned business entity Bidder;
 - (2) Award to a New York City Bidder;
 - (3) Award to a certified New York State small, minority or woman-owned business Bidder;
 - (4) Award to a New York State Bidder.
- B. If two (2) or more Bidders still remain equally eligible after application of Section A above, the 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.

22. REJECTION OF BIDS

A. Rejection of Individual Bids. The ACCO may reject a bid if:

- (1) The Bidder fails to furnish any of the information required pursuant to the bid documents; or if
- (2) The Bidder is determined to be not responsible pursuant to the PPB Rules; or if
- (3) The bid is determined to be non-responsive pursuant to the PPB Rules; or if
- (4) The bid, in the opinion of the ACCO 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 items, or if the imbalance is corrected pursuant to the PPB Rules.

B. Rejection of All Bids. The ACCO may reject all bids and may elect to re-solicit by bid or by other method authorized by the PPB Rules.

23. RIGHT TO APPEAL DETERMINATION OF NON-RESPONSIVENESS OR NON-RESPONSIBILITY AND RIGHT TO PROTEST SOLICITATION 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 the PPB Rules.

24. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

The bid solicitation is subject to applicable provisions of Federal, State and Local Laws and executive orders requiring affirmative action and equal employment opportunity.

25. VENDEX QUESTIONNAIRE

A. New York City Administrative Code Section 6-116.2 and the PPB Rules established a requirement that VENDEX questionnaires or an Affidavit of No Change, as appropriate, must be completed and submitted by all persons or entities seeking to do business with the City of New York. Generally, if this bid is one hundred thousand dollars (\$100,000) 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 the Bidder has received from a City Contractor within the past twelve (12) months equals or exceeds one hundred thousand dollars (\$100,000) then VENDEX questionnaires must be completed by the Bidder. The VENDEX questionnaires consist of a Business Entity Questionnaire and a Principal Questionnaire, both of which are either included in the Bid documents or may be obtained by contacting the agency contact person listed in Section 7 above. The VENDEX questionnaire or the Affidavit of No Change must be completed and submitted to the Department before any award of the Contract may be made or before an approval is given for a proposed subcontractor. Detailed instructions regarding the completion of VENDEX questionnaires are included in the VENDEX package. Non-compliance with these submission requirements may result in the disqualification of the bid or vendor, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the Contract after its

award. Questionnaires need be completed only once every three (3) years, so long as a prospective contractor, prior to the award, certifies that there has been no material changes in the information previously submitted. Any questions concerning the VENDEX questionnaires must be submitted to the ACCO or the agency contact person for this Contract.

B. VENDOR NAME CHECK FEE IMPLEMENTATION

Pursuant to Procurement Policy Board Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the VENDEX system, including the Vendor Name Check process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable required fees for any of its subcontractors for which Vendor Name Check reviews are required.

The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350.

26. COMPLAINTS ABOUT 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 should inform the Comptroller, Office of Contract Administration, One Centre Street, Room 1005, New York, NY 10007.

27. BID, PERFORMANCE AND PAYMENT SECURITY

- A. General. The ACCO may require bid, performance or payment security, or all three (3), on any contract for goods or services (see Schedule "A" located in Part E).
- B. Bid security. Each bid must be accompanied by bid security in an amount and type as specified in Schedule "A" (see Part E). The bid security shall assure the City of New York of the adherence of the Bidder to its bid, the execution of the contract and the furnishing of performance and payment bonds by the Bidder, if required. If a bid does not comply with the bid security requirements of this bid document, the bid may be rejected as non-responsive.
- C. Bid security will be returned to bidders as follows:
- (1) Within ten (10) days after the bid opening, the Comptroller will be notified to return the bid securities of all but the three (3) lowest Bidders. Within five (5) days after the award, the Comptroller will be notified to return the bid securities of the remaining two (2) unsuccessful Bidders.
 - (2) Within five (5) days after the execution of the Contract and acceptance of the Contractor's bonds, the Comptroller will be notified to return the bid security of the successful Bidder or, if no Performance and Payment bonds are required, the Comptroller will be notified to return the bid security only after the sum retained under applicable provisions of the Contract equals the bid security.

- (3) Where all bids are rejected, the Comptroller will be notified to return the bid security of all Bidders at the time of rejection.
- D. Performance and Payment Security. The performance and payment security, if required in the bid documents and in the amounts specified in Schedule “A” (see Part E), shall be delivered by the Contractor to the City within ten (10) days after the receipt of a Notice of Award. If a Contractor fails to deliver the required performance and payment security, then the award shall be rescinded, its bid security shall be enforced and the award of the Contract may be made to the next lowest responsive and responsible Bidder or the Contract may be rebid.
- E. ACCEPTABLE SECURITY. Acceptable security for bids, performance and payment shall be limited to:
- (1) A one-time bond in a form satisfactory to the City;
- (2) A bank-certified check or money order; or
- (3) City bonds.
- F. FORM OF BONDS. Security provided in the form of bonds must be prepared on the form of bonds authorized by the City of New York. Forms for bid, performance and payment bonds are included in the bid documents (*see Part B*). Such bonds must have as surety thereunder, such Surety Company or Companies as are approved by the City of New York and authorized to do business in the State of New York.
- G. POWER OF ATTORNEY. Attorneys-in-fact who sign bid, performance or payment bonds must file with each bond a certified copy of their power of attorney to sign said bond.

28. INSURANCE

Bidders are advised that the insurance requirements herein are regarded as a material term of this Contract. During performance and up to the date of final acceptance, including any maintenance and guaranty period, the Contractor must effect and maintain with insurance companies authorized and licensed to do business in the State of New York, the types and amounts of insurance specified in Schedule “A” (See Part E) of this Invitation for Bids. Pursuant to Section 57 of the New York State Worker’s Compensation Law, the bidder must submit proof of worker's compensation and disability benefits coverage to the ACCO prior to the execution of any contract resulting from this solicitation. ALL other required insurance documentation must also be submitted prior to commencement of work of this Contract.

29. FAILURE TO EXECUTE CONTRACT AND FURNISH SECURITY OR INSURANCE

If the successful Bidder fails to execute the Contract and furnish any required security and insurance, within (10) days after notice of the award of the Contract, the bid security of the successful Bidder or so much thereof as shall be applicable to the amount of the award made, shall be forfeited and retained by the City, and the successful Bidder shall be liable for and hereby agrees to pay on demand the difference between the price bid and the price for which such

Contract shall be subsequently awarded, including the cost of any reletting less the amount of such bid security. No plea of mistake in such accepted bid shall be available to the Bidder for the recovery of the bid security or as a defense to any action based upon such accepted bid. Further, should the Bidder's failure to comply with this section cause any funding agency, body or group (Federal, State, City, public, private, etc.) to terminate, cancel or reduce the funding on this project, the Bidder in such event shall be liable also to the City for the amount of actual funding withdrawn by such agency, body or group on this project, less the amount of the forfeited bid security.

30. SALES, EXCISE AND FEDERAL TRANSPORTATION TAXES

Unless this Contract indicates otherwise, the City is exempt from the payment of any sales, excise or Federal transportation taxes. The bid price must be exclusive of such taxes and shall be so construed.

31. BIDDER QUALIFICATIONS - EVIDENCE OF ABILITY AND FINANCIAL QUALIFICATIONS

- A. Before or after Contract award, the City reserves the right to inspect the Bidder's plant or premises.
- B. The Bidder shall, upon request, submit evidence that will prove to the satisfaction of the Commissioner that the Bidder is qualified and able to furnish the services on which it bid and perform the services in the manner and time specified in the Contract. The Bidder shall also furnish evidence that it has secured the necessary licenses, permits or certificates, required by any legislative or regulatory body having jurisdiction, to carry on the business of furnishing the services on which the bid was submitted.
- C. The Bidder shall, upon request, provide complete financial statements prepared by a certified public accountant, which shall include without limitation, a certified balance sheet, revenue and expense sheet, fixed and capital assets, or other information concerning the Bidder's financial status for examination as may be required by the Department to ascertain Bidder's financial qualifications to perform the Contract.
- D. Bids will be accepted from any firm that has been in the business of providing comparable service to that specified herein, for at least the previous three (3) years prior to the submission of their bids. Bidders shall further certify that they have performed in a satisfactory or better manner during the above referenced time period. In addition, bidders shall certify that they employ a work force qualified to perform the specified services, as referenced in Part C.
- E. For verification purposes, the lowest apparent responsive and responsible Bidder shall submit the following within five (5) business days of receipt of a request for such from the Department:
 - 1. Documentation that the Bidder has been in business for at least the previous five (5) years, performing comparable work;

2. Documentation of at least three (3) business references from clients for whom the bidder has provided similar services within the past three (3) years.
 3. Business references from at least three clients having comparable premises, serviced by the Bidder, indicating that the work performed was of a satisfactory or better quality; and
 4. Information such as resumes, that provides the names and experience of the Bidder's employees and management that will be responsible for the specified work. If new employees are hired during the term of this contract to perform services for this Contract, the Contractor shall be responsible for providing the aforementioned information about said employee(s) to the Department, within five (5) business days of their hiring. All such new hires shall meet the requirements set forth in Part C, if any.
- F. If the evidence required in Sections 31(B) through 31(E) above is not furnished, or if, upon examination of such evidence or other inspection of the Bidder's plant or premises, it is found that the Bidder does not comply with the requirements set forth in this Contract, the Commissioner shall have the right to reject the bid in whole or in part. Should the non-compliance be discovered after the award is made, the Commissioner shall have the right to cancel and terminate this Contract and/or declare the Contractor in default, in addition to any other remedies provided by Contract or at law or equity.
- G. In addition to any other requirement of this Contract, the Commissioner may request the Bidder to submit a sworn statement or submit to an oral examination setting forth such information as may be deemed necessary by the Commissioner to determine the Bidder's ability and responsibility to perform the work and supply the services in accordance with the Contract.

32. DEPARTMENT OF BUSINESS SERVICES, DIVISION OF LABOR SERVICES (EMPLOYMENT REPORT)

- A. **Who Must File A Complete Employment Report:** In accordance with Executive Order No. 50 (1980), as modified by Executive Order No. 108 (1986) and its implementing regulations, the filing of a completed Employment Report (ER) is a requirement of doing business with the City of New York if:
- (1) The Bidder has been identified as the lowest Bidder for a supply or service Contract or his/her proposal for supplies or services has been accepted; and
 - (2) The Contract value exceeds fifty thousand dollars (\$50,000); and
 - (3) The Bidder's firm employs fifty (50) or more people.

Each successful Bidder must file an ER if it meets each of these conditions. In addition, suppliers, subcontractors or vendors performing on the Contract who meet conditions (2) and (3) above, must also file an ER. The ER will be sent by the low bidder under separate cover.

- B. Who must file a Less Than 50 Employees Certificate.
- (1) Any Contractor or any of its facilities performing on the Contract that has fewer than fifty (50) employees, although the Contract value exceeds fifty thousand dollars (\$50,000), need only submit a “Less Than 50 Employees Certificate.”
 - (2) Any Subcontractor, supplier or vendor to the prime Contractor performing on the Contract and any of its facilities performing on the Contract which have fewer than fifty (50) employees, need only submit the “Less Than 50 Employee Certificate,” even if the Subcontract value exceeds fifty thousand dollars (\$50,000).

33. PROMPT PAYMENT

- A. The Prompt Payment provisions set forth in the PPB 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 the PPB 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 the PPB Rules.

34. BIDS SHALL BE TYPEWRITTEN OR WRITTEN LEGIBLY IN INK

- A. Each Bidder shall submit its bid typewritten or written legibly in ink and shall sign the bid in ink. The signer shall initial in ink any and all erasures or alterations to the bid.
- B. If the bid price has been materially altered, alterations must be initialed in ink by the Bidder. If the alteration has not been initialed in ink, and can be severed from the other items in the bid, then that particular item only may be considered non-responsive.

35. APPROVAL OF CONTRACT

- A. This Agreement shall be neither binding nor effective unless and until it is registered with the Comptroller of the City of New York pursuant to the New York City Charter § 328.
- B. The requirements of this Section 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.

36. PERFORMANCE EVALUATIONS

The Contractor is subject to an annual performance evaluation to be conducted by the Agency pursuant to the PPB Rules.

37. **BID SHEETS**

Please use the Bid Sheets in Part B of this Invitation for Bids document for your unit price quotations and projected total costs for the term of the Contract.

38. **MINORITY OWNED AND WOMEN OWNED BUSINESS ENTITY (M/WBE)**

If the contract resulting from this Invitation for Bids will be subject to M/WBE participation requirements under Section 6-129 of the Administrative Code of the City of New York, as indicated by the inclusion of Schedule B – M/WBE Utilization Plan (Attachment A) and the Participation Goals indicated in Part I thereof, proposers must complete the Schedule B – M/WBE Utilization Plan and submit it with their proposal. Please refer to the Schedule B – M/WBE Utilization Plan and the Notice to All Prospective Contractors (Attachment A) for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms. If the proposer intends to seek a full or partial waiver of the Participation Goals on the grounds described in Section 10 of the Notice to All Prospective Contractors, including but not limited to, proposer’s intention to use its own forces to perform any or all of the required contract work would result in a failure to attain the Participation Goals, the proposer must request and obtain from the Agency a full or partial waiver of the Participation Goals (M/WBE Utilization Plan, Part III) in advance of proposal submission and submit the waiver determination with the proposal. Please note that if a partial waiver is obtained, the proposer is required to submit a completed Schedule B-M/WBE Utilization Plan based on the revised Participation Goals in order to be found responsive.

39. **NO BLASTING**

Unless otherwise permitted in the Plans and/or Specifications, no blasting will be allowed. The Contractor shall use line drilling or other methods acceptable to DOC.

40. **LABOR LAW**

Section 220 of the New York State Labor Law requires payment of the prevailing rate of wages when a public agency contract involves the employment of laborers, workers, or mechanics and concerns a public work. Public works projects are, as a general matter, public construction projects.

Labor Law 231 requires prevailing wages to be paid to each service employee under a contract in which the “principal purpose” is to furnish services through the use of building service employees. Labor Law 230(1) defines "building service employee" or “employee” as “any person performing work in connection with the care or maintenance of an existing building, or in connection with the transportation of office furniture or equipment to or from such building, or in connection with the transportation and delivery of fossil fuel to such building.” Labor Law section 231 does not require the payment of prevailing wages to service employees if the *principal purpose* of the contract is not to furnish services provided by building services employees.

41. **IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS**

A. 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") §103-9. 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:

- (1) 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
- (2) 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.

B. 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.

C. 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.

42. SUBCONTRACTOR REPORTING

A. 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. 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.

- B. In order to obtain subcontractor approval under Article 11 of Part D 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.
- C. 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.
- D. Contractor hereby agrees to these provisions.

PART B: BID FORMS

- I. BIDDER INFORMATION**
- II. BIDDER REPRESENTATION AND WARRANTIES**
- III. BID SCHEDULE OF PRICES AND
SIGNATURE OF BIDDER AND AFFIDAVIT**
- IV. TAX AFFIRMATION**
- V. IRAN DIVESTMENT ACT CERTIFICATION**

NOTICE

- Before bidding, Bidders must review, by personal examination or such other means as they may prefer, the nature and extent of the work required, detailed specifications, plans, agreement and location(s) of the proposed work. Bidders must determine and allow for all difficulties which may be encountered in the prosecution of the work.

**FAILURE TO COMPLETE THIS PART B IN DETAIL WILL RESULT IN REJECTION
OF YOUR BID**

No Further Text on This Page.

PIN: 072201744HMD

**The City of New York
Department of Correction**

Bid for Furnishing All Labor and Material Necessary and Required For:

PIN NUMBER: 072201744HMD

Date of Bid: **July 25, 2017**

I. BIDDER INFORMATION

Name of Bidder: _____

Contact Person: _____

Address: _____

Telephone Number: (____) _____

Fax Number: (____) _____

Type of Organization (Check one of the following boxes)

- Individual
- Unincorporated organization (e.g. partnership or joint-venture)
- Corporation

Place of Business of Bidder: _____

STREET ADDRESS

CITY

STATE

ZIP CODE

If Bidder is a Corporation

Corporate Tax ID Number: _____

Jurisdiction of Incorporation: _____

Year of Incorporation: _____

Names and Home Addresses of the Following Officers:

President:

NAME: _____

ADDRESS: _____

PIN: 072201744HMD

Secretary:

NAME: _____

ADDRESS: _____

Treasurer:

NAME: _____

ADDRESS: _____

If Bidder is an individual

Residence of Bidder: _____

STREET ADDRESS

CITY

STATE

ZIP CODE

* Social Security Number: _____ - _____ - _____

* *Under the Federal Privacy Act, 5 USC § 552a (1996), as amended from time to time, the furnishing of social security numbers on City Contracts is voluntary. Failure to provide a social security number will not result in a bidder's disqualification. The City will use social security numbers to identify bidders to ensure their compliance with laws, to assist the City in enforcement of laws and to provide the City with a means of identifying those businesses that seek City Contracts.*

If Bidder is a partnership

Employer Identification Number: _____

Names of Partners

Residence

If Bidder is a Joint Venture

Employer Identification Number: _____

Names of Joint Venturers

Residence

II. BIDDER REPRESENTATIONS AND WARRANTIES

Each of the above-named Bidders hereby certifies, affirms and declares:

A. This Bidder is of lawful age and the only one interested in this bid and that no person, corporation or organization other than hereinabove named has any interest in this bid or in the Contract.

B. The Bidder and each person bidding on the Bidder's behalf do hereby certify, under penalty of perjury, that to the best of each such persons knowledge and belief:

The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor or potential competitor; and

Unless otherwise required by law, the prices quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the bid opening, directly or indirectly, to any other Bidder or to any competitor; and

No attempt has been made or will be made by the Bidder to induce any other person, partnership, corporation or organization to submit or not to submit a bid for the purpose of restricting competition; and

No member of the City Council, or other officer, 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; and

This 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 obligations 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 the State of New York, nor is there any proceeding pending relating to the responsibility or qualification of this Bidder to receive public contracts except _____

_____.

PIN: 072201744HMD

- C. The Bidder has examined all parts of this Bid document, including but not limited to the Contract and the terms and conditions thereof, and if this bid is accepted as submitted, this Bidder shall execute the Contract as set forth herein.
- D. This 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.
- E. This Bidder is duly licensed to do business in the City of New York and the State of New York and the Bidder currently holds or agrees to obtain all necessary permits and other authorization required by law or regulation for performance of the Contract.
- F. This Bidder's attention has been specifically drawn to the equal employment provisions of the Contract and this Bidder warrants that it will comply with all the terms and provisions prescribed therein.
- G. This Bidder as an individual or as a member, partner, director or officer of the Bidder, if the same be a firm, partnership or corporation executes this document expressly warranting and representing that should this bid be accepted by the City and the Contract awarded to him, he and his subcontractors engaged in the performance of this Contract:
- 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 Section 220-e of the New York State Labor Law; and
 - Have complied with the provisions of the aforesaid laws since its effective date; and
 - Will post notices setting forth the requirements of the aforesaid laws, to be furnished by the City, 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 review them, and will continue to keep such notices posted until the supplies, materials, equipment, work labor and services required to be furnished or rendered by the Contractor have been finally accepted by the City.
- H. The Bidder, as an individual, or as a member, partner, director or officer of the Bidder, if the same be a firm, partnership or corporation, executes this document expressly warranting and representing that the Bidder is not disqualified under the provisions of Section 6-109 of the Administrative Code of the City of New York for the award of this Contract and that should this bid be accepted by the City and

PIN: 072201744HMD

this Contract awarded to the Bidder, the Bidder and his subcontractors engaged in the performance of this Contract:

- 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 any other stipulations and rules and regulations applicable thereto; and
 - Have complied with the provisions of said Section 6-109 and said rules and regulations since their respective enforcement date insofar as applicable to the bidder and to his subcontractors.
- I. The Bidder as an individual, or as a member, partner, director or officer of the Bidder, by executing this document on behalf of such firm, partnership or corporation, represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other Contract between the parties. The Bidder makes such representations and warranties to induce the City to enter into this Contract and the City relies upon such representations and warranties in the execution hereof. For breach or violation of such representations and warranties, the Commissioner shall have the right to annul this Contract without liability, entitling the City to recover all monies paid hereunder and the Bidder/Contractor shall not make claims for, or be entitled to recover any sum or sums due under this Contract. This remedy, if effected shall not constitute the sole remedy afforded the City for the falsity or breach nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Contract.
- J. The Bidder has visited and examined the site of the work and has examined the Contract in the form approved by the Corporation Counsel, and will execute the Contract and perform all its items, covenants and conditions and will provide, furnish and deliver all work, materials, supplies, equipment and all labor and material necessary or required for the completion of the Contract work, all in strict conformity with the Contract, in accordance with the schedule of prices appended hereto.
- K. The Bidder represents and warrants that it will not utilize tropical hardwoods as defined in Section 167-b of the New York State Finance Law in the performance of this Contract except as expressly permitted by the foregoing provisions of law.

All material, fixtures, supplies and equipment furnished under the Contract shall be new and unused, except as approved by the Agency or as specified and of standard first-grade quality and the best workmanship and design. The City encourages use of recycled products where practicable.

No Further Text on This Page
PIN 072201744HMD

BID SHEET

| YR 1 | | A | B | C | D | |
|--|-------------|-------|-----------------|-------------------|------------------------|------------|
| TASK | HOURLY RATE | # RNS | ESTIMATED WEEKS | EST. WEEKLY HOURS | ESTIMATED ANNUAL HOURS | TOTAL COST |
| FIT TEST -RIKERS | | 4 | 52 | 40 | 8320 | |
| FIT TEST FOR NEW RECRUITS * | | 4 | 8 | 40 | 1280 | |
| VACCINES - RIKERS | | 2 | 52 | 40 | 4160 | |
| VACCINE NEW RECRUITS | | 6 | 16 | 40 | 3840 | |
| TB CONTACT INVESTIGATIONS (C.I.) | | 2 | 20 | 40 | 1600 | |
| HMD VACCINE/ HEALTH FAIR RN/RN Preceptor | | 1 | 52 | 40 | 2080 | |
| TOTAL | | | | | 21,280 | |

| YR 2 | | A | B | C | D | |
|--|-------------|-------|-----------------|-------------------|------------------------|------------|
| TASK | HOURLY RATE | # RNS | ESTIMATED WEEKS | EST. WEEKLY HOURS | ESTIMATED ANNUAL HOURS | TOTAL COST |
| FIT TEST -RIKERS | | 4 | 52 | 40 | 8320 | |
| FIT TEST (NEW RECRUITS)* | | 4 | 8 | 40 | 1280 | |
| VACCINES - RIKERS | | 2 | 52 | 40 | 4160 | |
| VACCINE NEW RECRUITS | | 6 | 16 | 40 | 3840 | |
| TB CONTACT INVESTIGATIONS (C.I.) | | 2 | 20 | 40 | 1600 | |
| HMD VACCINE/ HEALTH FAIR RN & RN Preceptor | | 1 | 52 | 40 | 2080 | |
| TOTAL | | | | | 21,280 | |

PIN 072201744HMD

| YR 3 | | A | B | C | D | |
|--|-------------|-------|-----------------|-------------------|------------------------|------------|
| TASK | HOURLY RATE | # RNS | ESTIMATED WEEKS | EST. WEEKLY HOURS | ESTIMATED ANNUAL HOURS | TOTAL COST |
| FIT TEST -RIKERS | | 4 | 52 | 40 | 8320 | |
| FIT TEST (NEW RECRUITS)* | | 4 | 8 | 40 | 1280 | |
| VACCINES - RIKERS | | 2 | 52 | 40 | 4160 | |
| VACCINE NEW RECRUITS | | 6 | 16 | 40 | 3840 | |
| TB CONTACT INVESTIGATIONS (C.I.) | | 2 | 20 | 40 | 1600 | |
| HMD VACCINE/ HEALTH FAIR RN/RN Preceptor | | 1 | 52 | 40 | 2080 | |
| TOTAL | | | | | 21,280 | |

* At two locations.

[Year 1 Total] + [Year 2 Total] + [Year 3 Total] = Grand Total Bid Amount

**PIN 072201744HMD
Bid Sheet**

Grand Total Bid Amount in Words: _____

Notes:

- (1) For further explanations of the above cost, see the appropriate sections of the technical requirement document.
- (2) The respondent vendor is not to alter the bid format from that required herein. Any such alterations of the bid format will result in a determination of the respondent being “nonresponsive”.
- (3) Inclusion of disclaimers which contradict the requirements of this Invitation to Bid will also result in a determination of the respondent being “nonresponsive”.

Bidder’s Company Name:

Bidder’s Representative:

(Print Name)

(Title)

Signature of Bidder’s Representative: _____

Date: _____

PIN: 072201744HMD

BID SHEET

SIGNATURE OF BIDDER AND AFFIDAVIT

Name of Bidder: _____

By: _____
Partner or Authorized Corporate Officer

Print Name

Print Title

Date: _____

FOR CORPORATIONS ONLY:

(Corporate Seal):

ATTEST: _____
Secretary of Corporate Bidder

Affidavit on following page must be subscribed and sworn to before a Notary Public.

**PIN 072201744HMD
AFFIDAVIT**

STATE OF NEW YORK, COUNTY OF _____ ss:
_____ being duly sworn, says:

Note to Bidders: *Choose only one (1) of the following three (3) options. (Check box and complete)*

- Individual Bidder:
I am the person described in and who executed the foregoing bid and the several matters therein stated are in all respects true.
- Corporation Bidder:
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 several matters therein stated, and they are in all respects true.
- Unincorporated Organization (*e.g. Partnership or Joint Venture*) Bidder:
I am a member of _____, the unincorporated organization described in and which executed the foregoing bid. I subscribed the name of the unincorporated organization thereto on behalf of such organization and the several matters therein stated are in all respects true.

(Signature of the person who signed the bid)

Print Name: _____
Print Title: _____

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

PIN: 072201744HMD

IV. TAX AFFIRMATION

The undersigned Bidder affirms and declares that said Bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City of New York, and 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 contracts except

Full name of Bidder: _____

Address: _____

City: _____ State: _____ Zip Code: _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A. Individual or Sole Proprietorship *

SOCIAL SECURITY NUMBER: _____ - ____ - _____

B. Partnership, Joint Venture or other Non-Incorporated Organization.

EMPLOYER IDENTIFICATION NUMBER: _____ - ____ - _____

C. Corporation (*If a corporation place seal below*)

EMPLOYER IDENTIFICATION NUMBER: _____ - ____ - _____

By: _____
Signature **Title**

If a corporation place seal here:

* Under the Federal Privacy Act, 5 USC § 552a (1996), as amended from time to time, the furnishing of Social Security Numbers by bidders on City Contracts is voluntary. Failure to provide a Social Security Number will not result in a Bidder's disqualification. Social Security Numbers will be used to identify Bidders, Proposers or Vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying businesses which seek City Contracts.

V. **BIDDER'S CERTIFICATION OF COMPLIANCE**
WITH IRAN DIVESTMENT ACT

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

BIDDER'S CERTIFICATION

By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer 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 its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York
_____, 20__

SIGNATURE

PRINTED NAME

TITLE

Sworn to before me this
_____ day of _____, 20__

Notary Public Dated

PIN: 072201744HMD

ACKNOWLEDGMENT OF CONTRACTOR—IF A CORPORATION

State of _____ County of _____ ss:

On this ___ day of _____, 20___, before me personally appeared _____
_____ to me known, who being by me duly sworn, did depose and say
that he /she resides at _____, that he/she is
the _____ of _____
_____, _____ the
corporation described in and which executed the foregoing instrument; that he/she knows the
seal of said corporation; that one of the seals affixed to said instrument is such corporate seal;
that it was so affixed by order of the directors of said corporation, and that he/she signed his/her
name thereto by like order.

Notary Public

ACKNOWLEDGMENT OF CONTRACTOR—IF A PARTNERSHIP

State of _____ County of _____ ss:

On this ___ day of _____, 20___, before me personally appeared _____
_____ to me known and known to me to be a member of the
firm of _____
the firm described in and who executed the foregoing instrument and he/she acknowledged to me
that he/she executed the same as and for the act and deed of said firm.

Notary Public

PIN: 072201744HMD

ACKNOWLEDGMENT OF CONTRACTOR—IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this ____ day of _____, 20__, before me personally appeared

_____ to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed same for the purpose herein mentioned.

Notary Public

PART C: DETAILED SPECIFICATIONS/SCOPE OF WORK

DEPARTMENT OF CORRECTION OF THE CITY OF NEW YORK

SPECIFICATIONS FOR PER DIEM NURSES FOR AN EXPANDED INFECTION CONTROL PROGRAM: TB SCREENING, HEPATITIS IMMUNIZATIONS, FLU VACCINE, RESPIRATORY PROTECTION AT VARIOUS NYC DEPARTMENT OF CORRECTION FACILITIES.

I. GENERAL:

The Department of Correction (DOC) is soliciting competitive sealed bids for nurse staffing agencies for its Infection Control initiatives. The Department has embarked on an expanded program of Infection Control to include all members of service, probationary officers and new recruits, with particular regard to enhancing employee health and welfare through vigorous health education and health promotion initiatives.

II. DEFINITIONS

- A. "Agreement" means this Agreement, as amended, modified or supplemented from time to time in accordance with the terms of this agreement.
- B. "HMD" means the Health Management Division, located at 59-17 Junction Blvd, Rego Park, 11368.
- C. "HMD LIAISON" is the Executive Director at the Health Management division or a designated manager.
- D. "Contractor" means the party (Staffing Agency) providing nurses pursuant to this Agreement
- E. "DOC" or "Department" means the Department of Correction of the City of New York.
- F. "'DOC Facility" means a DOC jail facility or other location owned, leased or operated by DOC.
- G. "Notice to Proceed" means the written notification of the Contractor to commence the provision of services pursuant to this Agreement.
- H. "Services" means any or all services provided by the nurses working for the Contractor, pursuant to this Agreement.
- I. "Contractor Representative" means the nursing staff member assigned to work for HMD.

III. TERM OF CONTRACT

- A. The term of the Agreement shall be from the date of Notice to Proceed until the expiration for three (3) consecutive years with two one-year renewals, unless otherwise terminated, cancelled, abrogated or amended. The two one-year renewals will be exercised at the sole discretion of the Department.
- B. Should a renewal be exercised, the Contractor may request a cost escalation based on the increase of the CPI Consumer Price Indexes from the US Department of Labor in this particular index.

The Department shall endeavor to provide the Contractor sixty (60) days prior written notice of such renewal. Failure to provide such notice shall not prevent the Department from exercising this option to renew. The Contractor may request a cost escalation based on the Consumer Price Index published by the Department of Labor, Bureau of Labor

Statistics Series ID WPU51110201 for all Urban Consumers NY-NJ-CT. The Contractor shall be entitled to the percentage change between the CPI for the preceding twelve (12) month period, ending one hundred twenty (120) days prior to the their anniversary of contract commencement, or a five percent (5%) maximum escalation rate, whichever is less. The following is an example of escalation calculation:

| | |
|--------------------------------|-------------|
| CPI for Current period | 136.0 |
| Less CPI for previous period | 129.9 |
| Equals index point change | 6.1 |
| Divided by previous period CPI | 0.047 |
| Result multiplied by 100 | 0.047 x 100 |
| Equals percent change | 4.7 |

IV. SCOPE OF SERVICES

1. OVERVIEW

- i. The New York City Department of Correction requires the services of per diem New York State licensed registered nurses to screen all Department personnel, probationary officers and new recruits for Tuberculosis.
- ii. The New York City Department of Correction requires the services of per diem New York State licensed registered nurses to administer immunization against Hep “B” to all Department personnel, probationary officers and new recruits.

- a. The Hepatitis B vaccine shall be administered as a three (3) part vaccine series over a seven (7) month period. Inoculations are not mandatory; however, nurses should be able to educate the DOC staff of all health benefits and/or side effects of accepting or declining the vaccine.
- iii. The New York City Department of Correction requires the services of per diem New York State licensed registered nurses to offer the FLU vaccine to all Department personnel, probationary officers and new recruits as a preventative measure to infection.
- iv. The Occupational Safety and Health Administration (OSHA) regulations require that all employees (including probationary officers and recruits), assigned to wear a respirator, must be medically evaluated and receive medical clearance. The use of registered nurses to provide medical clearances, for the Respiratory Protection Program, has been authorized by the Public Employee Safety and Health Bureau (PESH).
- v. Medical personnel must be able to perform the services outlined above on site.

2. CLINICAL QUALIFICATIONS

- i. All nurses must be currently licensed to practice nursing in the New York State.
- ii. All nurses must be insured against malpractice.

3. WORK SCHEDULE

- i. Nurses will be expected to travel to all the jails and affiliated agencies of NYC DOC throughout New York City for fifty-two (52) weeks.
- ii. All work will be performed from Monday through Friday during two (2) shifts from 7am-3pm and 4pm to midnight (excluding holidays, see below).
- iii. Each shift will be eight (8) hours in duration with one (1) hour unpaid lunch break.
- iv. The Contractor will be paid for 100% of labor hours expended during delays more than 15 minutes in accessing and leaving work areas in the facilities. Travel time to or from facilities shall not be paid. If the Department delays the Contractor from entering or exiting a Departmental facility or location by more than 15 minutes, Contractor

will paid for 100% of the labor hours expended beyond the initial 15 minutes. The Contractor shall list such claim in its invoice and substantiate with evidence(s). Should the Contractor wait for more than 30 minutes for access or escort, the Contractor must notify the Director or his designee at 718-595-2574 or 718-546-2578.

- v. No overtime will be approved.
- vi. No work will be done on “City Holidays.”

• City Holidays

Below is a list of the official New York City Holidays with the specific dates listed through 2018. The contractor may request clarification of future dates.

| Holidays | 2017 | 2018 |
|------------------|------------|------------|
| New Years Day | 01/01/2017 | 01/01/2018 |
| MLK Day | 01/20/2017 | 01/19/2018 |
| President’s day | 02/17/2017 | 02/16/2018 |
| Memorial Day | 05/26/2017 | 05/25/2018 |
| Independence Day | 07/4/2017 | 07/03/2018 |
| Labor Day | 09/01/2017 | 09/07/2018 |
| Columbus Day | 10/13/2017 | 10/12/2018 |
| Election Day | 11/4/2017 | 11/3/2018 |
| Veteran’s Day | 11/11/2017 | 11/11/2018 |
| Thanksgiving | 11/27/2017 | 11/26/2018 |
| Christmas | 12/25/2017 | 12/25/2018 |

- vii. All working tours shall be reported on a weekly statement, which shall contain daily time sheets with the signatures of the nurse and the appropriate Department’s Representative.

4. CONTRACTOR’S MANAGERIAL OVERSIGHT

- i. The Contractor must ensure that all RN licenses and malpractice insurance remain current.
- ii. The Contractor must ensure that all required documents for clearances to Riker's Island and its affiliates are submitted timely to HMD to ensure timely processing (driver's license, current car registration and current car insurance).
- iii. The Contractor shall take all necessary precautions to ensure that the employees assigned to HMD, hereunder are in good health and proper physical condition to perform the work specified within.
- iv. Ensure weekly submission of RN timesheets to HMD.
- v. The Contractor must maintain a list of available new nurses for interviews.
- vi. The Contractor shall not discriminate in the employment of any individual or groups of individuals on the grounds of race, creed, color, religion, national origin, age, gender, disability, marital status, sexual orientation, alienage or citizenship.
- vii. Ensure that all RN candidates are vetted and confirmed to possess the requisite clinical skills to provide the required services of the contract.
- viii. The Contractor 's employees will be required to adhere to and recognize the Department's safety, security and fire protection policies when performing assigned work on the Department's property.
- ix. The Contractor will replace any nurse deemed incompetent, negligent or guilty of misconduct promptly, upon the request of the appropriate Department's Representative.

5. CONTRACT TERM

- i. The contractor term will be for three (3) consecutive years with two (2) one-year renewal options.
- ii. The contractor's performance will be reviewed annually.
- iii. The contract may be terminated by DOC should it be determined that the Contractor is not fulfilling the requirement(s) of this agreement.

6. LIQUIDATED DAMAGES

- i. The Contractor must maintain a roster of available nurses at all times.
- ii. In the event the assigned nurse is unable to work, the contractor will provide a replacement. A one (1) hour cancellation notification prior to the assigned start time to the liaison at HMD is required and the contractor is obligated to identify a replacement within a timely manner.
- iii. In the event the contractor is unable to replace a nurse as agreed to by the Department of Correction, liquidated damages will be assessed in the amount of \$100 per hour that said contractor is unable to furnish a nurse.

7. BILLING FOR SERVICES

- i. Staff time sheets will reflect weekly hours worked.
- ii. Nurses will submit all time sheets to the HMD liaison for verification and approval.
- iii. The HMD Liaison will immediately inform the contractor of any discrepancies or concerns.
- iv. The HMD liaison will forward all approved timesheets to the contractor for invoicing.
- v. Invoices shall be generated based on an hourly rate per employee.
- vi. The hourly rate must represent all costs to the Department of Correction.
- vii. Invoices shall be submitted to the Department of Correction Health Management Division and include the following information:
 1. Name of the Nurse
 2. Dates of service
 3. Applicable hourly rate of pay
 4. Number of hours worked during the week
 5. Contract Registration Number
 6. Verified and approved time sheet signed by the HMD Liaison must accompany all invoices.

8. GENERAL TERMS AND CONDITIONS

- i. All services pursuant to this Agreement shall be performed in accordance with all applicable Federal, State and City laws, rules, regulations and guidelines.
- ii. The Contractor is responsible for all insurance required by Federal, state and City laws for this type of work. The Contractor shall also be responsible for all employee benefits, payroll taxes and required payments/deductions, where applicable, any State Unemployment, Worker's Compensation and General Liability Insurance.
- iii. In the event of termination of this Agreement, the Contractor shall remain liable for the full performance of all terms and conditions of this Agreement that the Contractor was obligated to perform up to the time of such termination. Any and all continuing obligations and liabilities of the Contractor under this Agreement shall survive the termination of this Agreement.

9. FINAL ACCEPTANCE OF SERVICES

- i. Final Acceptance of the Services by the DOC shall be in the form of written notification from the DOC Authorized Representative that Services are satisfactorily performed and are accepted as complying with the terms and conditions of this Agreement.
- ii. The date of final acceptance shall be the date of such written notification.

10. CONFIDENTIALITY

- i. The Contractor agrees that all records, information or data which it may have access to, examine, prepare, maintain or have custody of and deliver hereunder ("Confidential Information") shall be kept strictly confidential.
- ii. The Contractor shall not at any time during the term of the Agreement, or thereafter, make any disclosure or statements or release to any third party confidential information without the prior written approval of the Department.
- iii. Upon expiration or termination of this Agreement, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor.
- iv. A breach of this section shall constitute a material breach of this Agreement for which the Department may immediately terminate the

Agreement. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

- v. This provision shall survive the expiration or termination of this Agreement.

END OF SPECIFICATIONS

PART D: TERMS OF CONTRACT

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

Affirmation (*Signatures*)

Certification (*Signatures and Notarizations*)

APPENDIX A

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

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” shall mean 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” shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” shall mean The City of New York.

D. “City Chief Procurement Officer” or “CCPO” shall mean 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” shall mean 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” shall mean the Comptroller of the City of New York.

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

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

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

J. “Law” or “Laws” shall mean 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” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. “PPB Rules” shall mean 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. “State” shall mean the State of New York.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties 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 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,

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officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph 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.

[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees and members of their immediate families are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees and members of their immediate families may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

Section 2.03 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 which 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.

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 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 2.06 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 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123

As required by 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 City Administrative 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 Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

In the event that 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 (7) days of filing.

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 VENDEX questionnaire must be submitted within thirty (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 Agency 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

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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 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. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), 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 and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor 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 Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. 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

4. The subcontractor specifically agrees to be bound by Section 4.07 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.

D. 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.

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

F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (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.

G. 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.

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage,

Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under 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 engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

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 (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative 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 shall be deemed a material breach of this Agreement.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e

A. 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 New York State 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 Fifty Dollars (\$50) 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.

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

Section 4.06 Non-Discrimination: 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 New York City Administrative Code § 6-108, that:

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

A. 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:

1. 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;

2. 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;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. 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 City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. 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.

B. 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:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or

3. Declaring the Contractor in default; and/or

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

C. 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.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) 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 Paragraph.

E. 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 Paragraph.

F. Nothing contained in this Section 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.

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, which 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, and other documents 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 records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York 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 or other documents 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, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents 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 and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents 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.

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.

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.

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 data (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 data 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. 1. 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.

2. 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 (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

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 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 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. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) 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 twenty-four (24) hours prior to any statement to the press or at least five (5) 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 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

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 not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

Section 7.03 Professional Liability Insurance

A. At the Department’s direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to 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.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. 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 (2) 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.

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit 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 CA0001.

B. If vehicles are used for transporting hazardous materials, the Business 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.

Section 7.07 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. 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.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such

self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

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

E. 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 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, 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 have coverage under such policy (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 as Additional Insured" and contain the following information: 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 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.

B. The Contractor's failure to maintain any of the insurance required by this Article 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 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. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (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 procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall

ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage 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 damage, loss or injury 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 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

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

Section 8.04 Infringement Indemnification

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by

the Contractor, the City 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 indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event 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 which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

Section 8.07 Withholding of Payments

A. In the event that 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. In the event that 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 further 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 setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 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 shall not be 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 officers 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. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that 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, AND REDUCTIONS IN FUNDING

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. If the City terminates this Agreement pursuant to this Section, 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

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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 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 Paragraph 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 thirty (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 (7) 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, 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 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 (5%) 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 (5%) 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 (5%) 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 (10) 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.

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. 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 (5) 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, 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.

C. If the City terminates the Agreement pursuant to this Section, 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. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a 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 forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (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 ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; 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, 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 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

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. 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 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 Agency may waive the requirements of this Section 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 is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) 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

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, 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.

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 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 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 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, 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 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 thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the 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 thirty (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 as the Contractor initiating the dispute.

3. **Agency Head Determination.** Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the 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. 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 thirty (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 thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all

material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

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 fifteen (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 forty-five (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 ninety (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 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, 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 thirty (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 thirty (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 forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of 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 thirty (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 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, 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 (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, 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. In the event of 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 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). In the event that 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 (10) 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 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. 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; the Department of Small Business Services; 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 Health; 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, 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 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. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section 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 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

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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 13.08 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 13.09 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 applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. 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 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written

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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 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 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 13.10 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. 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 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 vary 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 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 fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the 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.

CITY OF NEW YORK

CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

PART E: ATTACHMENTS

- Attachment A** **Participation By Minority - Owned and Women - Owned Business Enterprise in City Procurement**
- Attachment B Supply and Service Employment Report
- Attachment C MacBride Principles
- Attachment D Whistleblower Protection Expansion Act Rider
- Attachment E Paid Sick Leave
- Attachment F Hire NYC Rider
- Attachment G Undue Familiarity and Prevention of Sexual Abuse of Inmates by Staff
And Other Inmates
- Attachment H Security Clearance Request and Authorization Form
- Attachment I Security Requirements for All Work Performed On Rikers Island

ATTACHMENT A

**PARTICIPATION BY MINORITY – OWNED AND WOMEN – OWNED
BUSINESS ENTERPRISE IN CITY PROCUREMENT**

- **NOTICE TO PROSPECTIVE CONTRACTORS**
- **SCHEDULE B**

NOTICE TO ALL PROSPECTIVE CONTRACTORS

PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). 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.

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 I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I 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 New York City Department of Small Business Services 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 II (see Pages 2-4) 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; and (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. 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 II (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 II (see Pages 2-4) 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; and (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. 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 II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR**

CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). 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 MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing 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 III (Page 5) 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 by email at _____ or via facsimile at () _____. Bidders, proposers, or contractors, as applicable, who have submitted 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 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.

13. 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.

14. 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.

Tax ID#: _____

APT E-PIN #: 07217B0017

SCHEDULE B – M/WBE Utilization Plan
Part I: M/WBE Participation Goals

Part I to be completed by contracting agency

Contract Overview

APT E- Pin # 07217B0017 FMS Project ID#: _____

Project Title/ Agency PIN # Per Diem Nurses For An Expanded Infection Control Program PIN: 072201744HMD

Bid/Proposal Response Date _____

Contracting Agency DOC

Agency Address 75-20 Astoria Blvd. City East Elmhurst State NY Zip Code 11370

Contact Person Janell Cleary Title Contract Manager

Telephone # 718-546-0682 Email Janell.Cleary@doc.nyc.gov

Project Description (attach additional pages if necessary)

Empty box for Project Description.

M/WBE Participation Goals for Services

Enter the percentage amount for each group or for an unspecified goal. Please note that there are no goals for Asian Americans in Professional Services.

Prime Contract Industry:

| Group | Percentage |
|----------------------------------|------------|
| <u>Unspecified</u> | <u>5%</u> |
| or | |
| Black American | % |
| Hispanic American | % |
| Asian American | % |
| Women | % |
| Total Participation Goals | 5% |

Line 1

Tax ID#: _____

APT E-PIN #: 07217B0017

SCHEDULE B - Part II: M/WBE Participation Plan

Part II to be completed by the bidder/proposer.

Please note: For Non-M/WBE Prime Contractors who will NOT subcontract any services and will self-perform the entire contract, you must obtain a FULL waiver by completing the Waiver Application on pages 5 and 6 and timely submitting it to the contracting agency pursuant to the Notice to Prospective Contractors. Once a FULL WAIVER is granted, it must be included with your bid or proposal and you do not have to complete or submit this form with your bid or proposal.

| Section I: Prime Contractor Contact Information | |
|---|-----------------------|
| Tax ID # _____ | FMS Vendor ID # _____ |
| Business Name _____ | Contact Person _____ |
| Address _____ | |
| Telephone # _____ | Email _____ |

Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.

PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS

| | | | | |
|---|---------------------------------|--|---|---|
| <input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals. Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. | Total Bid/Proposal Value | Agency Total Participation Goals (Line 1, Page 1) | = | Calculated M/WBE Participation Amount \$ Line 2 |
| | \$ | X | = | \$ |

PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS

| | | | | |
|---|---------------------------------|--|---|---|
| <input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Modified M/WBE Participation Goals. Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. | Total Bid/Proposal Value | Adjusted Participation Goal (From Partial Waiver) | = | Calculated M/WBE Participation Amount \$ Line 3 |
| | \$ | X | = | \$ |

Tax ID#: _____

APT E-PIN #: 07217B0017

Section III: M/WBE Utilization Plan: How Proposer/Bidder Will Fulfill M/WBE Participation Goals. 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 above, 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 above, 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 above, as applicable.

Section IV: 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 brief description of the type(s) and dollar value of subcontracts for all/any services you plan on subcontracting if awarded this contract. For each item, indicate whether the work is designated for participation by MBEs and/or WBEs and the time frame in which such work is scheduled to begin and end. Use additional sheets if necessary.

✓ Scopes of Subcontract Work

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____

Section V: Vendor Certification and Required Affirmations

I hereby:

- 1) 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;
- 2) affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;
- 3) 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;
- 4) 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
- 5) 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 _____

Tax ID#: _____

APT E-PIN #: 07217B0017

SCHEDULE B – PART III – REQUEST FOR WAIVER OF M/WBE PARTICIPATION REQUIREMENT

Contract Overview

Tax ID # _____ FMS Vendor ID # _____
 Business Name _____
 Contact Name _____ Telephone # _____ Email _____
 Type of Procurement Competitive Sealed Bids Other Bid/Response Due Date _____
 APT E-PIN # (for this procurement): 07217B0017 Contracting Agency: _____
 DOC _____

M/WBE Participation Goals as described in bid/solicitation documents

_____ 5% Agency M/WBE Participation Goal

Proposed M/WBE Participation Goal as anticipated by vendor seeking waiver

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for services and/or credited to an M/WBE Prime Contractor or Qualified Joint Venture.

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. (Attach subcontracting plan outlining services that the vendor will self-perform and subcontract to other vendors or consultants.)
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal above. Explain under separate cover.

References

List 3 most recent contracts performed for NYC agencies (if any). Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

| CONTRACT NO. | AGENCY | DATE COMPLETED |
|---|---|---|
| Total Contract Amount \$ _____ | Total Amount Subcontracted \$ _____ | |
| Item of Work Subcontracted and Value of subcontract _____ | Item of Work Subcontracted and Value of subcontract _____ | Item of Work Subcontracted and Value of subcontract _____ |
| CONTRACT NO. _____ | AGENCY _____ | DATE COMPLETED _____ |
| Total Contract Amount \$ _____ | Total Amount Subcontracted \$ _____ | |

Item of Work
Subcontracted and
Value of subcontract

Item of Work
Subcontracted and
Value of subcontract

Item of Work
Subcontracted and
Value of subcontract

CONTRACT NO.

AGENCY

DATE COMPLETED

**Total Contract
Amount \$**

**Total Amount
Subcontracted \$**

Item of Work
Subcontracted and
Value of subcontract

Item of Work
Subcontracted and
Value of subcontract

Item of Work
Subcontracted and
Value of subcontract

List 3 most recent contracts performed for other entities. Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

(Complete ONLY if vendor has performed fewer than 3 New York City contracts.)

TYPE OF Contract

ENTITY

DATE COMPLETED

Manager at entity that hired vendor (Name/Phone No./Email)

**Total Contract
Amount \$**

**Total Amount
Subcontracted \$**

**Type of Work
Subcontracted**

TYPE OF Contract

AGENCY/ENTITY

DATE COMPLETED

Manager at agency/entity that hired vendor (Name/Phone No./Email)

**Total Contract
Amount \$**

**Total Amount
Subcontracted \$**

Item of Work
Subcontracted and
Value of subcontract

Item of Work
Subcontracted and
Value of
subcontract

Item of Work
Subcontracted and
Value of subcontract

TYPE OF Contract

AGENCY/ENTITY

DATE COMPLETED

Manager at entity that hired vendor (Name/Phone No./Email)

**Total Contract
Amount \$**

**Total Amount
Subcontracted \$**

Item of Work
Subcontracted and
Value of subcontract

Item of Work
Subcontracted and
Value of
subcontract

Item of Work
Subcontracted and
Value of subcontract

VENDOR CERTIFICATION: *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.*

Signature: _____

Date: _____

Print Name: _____

Title: _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL

Signature: _____

Date: _____

CITY CHIEF PROCUREMENT OFFICER APPROVAL

Signature: _____

Date: _____

Waiver Determination

Full Waiver Approved:

Waiver Denied:

Partial Waiver Approved:

Revised Participation Goal: _____%

ATTACHMENT B
SUPPLY AND SERVICE EMPLOYMENT REPORT

**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 |
|---------------------------|-------------------------------|--------------------------------------|---|--------------------------------------|
|---------------------------|-------------------------------|--------------------------------------|---|--------------------------------------|

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 |
|------------------------------|---|-------------------------------|-------------------|--|
|------------------------------|---|-------------------------------|-------------------|--|

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 employ 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.

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.

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.

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 _____

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).

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).

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 A: JOB CLASSIFICATION AND INCUMBENTS FORM

Occupational Category (CIRCLE ONE)* MGRS PROF TECH SAL CLER SERV FARM CRFT OPER LABR

Total number of incumbents in this category

CONTRACTOR NAME _____

FACILITY LOCATION: _____

| (1) Company Job Title | (2) Company Job No. | (3) Census Code** | (4) Job Group Assignment for this occupational category | | | | | (5) Total in Title | MALES | | | | | FEMALES | | | | | |
|--------------------------|------------------------|----------------------|--|---|---|---|---|-----------------------|--------------------|--------------------|-------------|--------------|------------------|---------------------|---------------------|--------------|---------------|------------------|--|
| | | | | | | | | | (6) W(non-Hisp) | (7) B(non-Hisp) | (8) Hisp | (9) Asian | (10) Nat Amer | (11) W(non-Hisp) | (12) B(non-Hisp) | (13) Hisp | (14) Asian | (15) Nat Amer | |
| | | | 1 | 2 | 3 | 4 | 5 | | | | | | | | | | | | |
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*Please include on each sheet, information concerning only 1 occupational category.
 **See listing of occupational categories.

NOTE: Make as many copies of this form as you require for each occupational category.

FORM B: NEW HIRES FORM/TRACKING EMPLOYEES HIRED OVER THE LAST THREE YEARS

CONTRACTOR NAME _____

FACILITY LOCATION: _____

| Employee Characteristics | | | At-Hire Information | | | Current Information | | |
|--|----------------|--------------------------------|------------------------|--------------------------------------|------------------------------------|---------------------------------|--|---------------------------------|
| (1) Social Security No. or Employee ID No. | (2) Sex (a) | (3) Race Ethnic Code (b) | (4) Year of Hire | (5) Company Job Number at Hire | (6) Matching Census Code (c) | (7) Weekly Salary at Hire | (8) Current Company Job Number (d) | (9) Weekly Current Salary |
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(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 new hires in 20__ /20__

NOTE: Make as many copies of this form as you require.

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) |
|--|----------------|--------------------------------|------------------------------|------------------------|-----------------------------------|-------------------------------|-------------------------------|
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(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 ___

ATTACHMENT C

MACBRIDE PRINCIPLES

MacBRIDE PRINCIPLES
NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

Pursuant to Section 6-115.1, prospective contractors for Contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars (\$10,000), or for construction involving an amount greater than fifteen thousand dollars (\$15,000), are asked to sign a rider in which they covenant and represent, as a material condition of their Contract, that any business in Northern Ireland operations conducted by the Contractor that holds a ten (10%) percent or greater ownership interest and any individual or legal entity that holds a ten (10%) percent or greater ownership interest in the Contractor will be conducted in accordance with the MacBride Principles of non-discrimination in employment.

Prospective Contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to such conditions has submitted a bid within five (5%) percent of the lowest responsible bid for a Contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the City that the Contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

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

PART A

In accordance with Section 6-115.1 of the Administrative Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds 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 this compliance with such principles.

PART B

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

- A. “MacBride Principles” shall mean those principles relating to non-discrimination in employment and freedom of work place opportunity which requires employers doing business in Northern Ireland to:
1. Increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
 2. Take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the work place and while traveling to and from work;
 3. Ban provocative religious or political emblems from the work place;
 4. Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
 5. Establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
 6. Abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
 7. Develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from the underrepresented religious groups;
 8. Establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
 9. Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE II ENFORCEMENT OF ARTICLE I

The Contractor agrees that the covenants and representations in Article I above are material conditions to this Contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this Contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion

may withhold from any amounts otherwise payable to the Contractor, the difference between the Contract price for the uncompleted portion of this Contract and the cost to the contracting entity of completing performance of this Contract either itself or by engaging another Contractor or Contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of the Contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of the Contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights or remedies the entity has pursuant to this Contract or by operation of Law.

No further text on this page.

ATTACHMENT D

**WHISTLEBLOWER PROTECTION EXPANSION ACT
RIDER**

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

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.



ATTACHMENT E
PAID SICK LEAVE LAW

PAID SICK LEAVE LAW CONTRACT RIDER

Introduction and General Provisions

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.¹ Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative 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”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. 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.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, 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.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website 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 Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

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

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

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 forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty 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.

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

- 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;
- 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;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

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.

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.

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.

Exemptions and Exceptions

Notwithstanding the above, the PSSL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSSL are expressly waived in such collective bargaining agreement;
- 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 PSSL for such employee;
- 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;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- 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
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

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.

Notice of Rights

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>.

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

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.

Enforcement and Penalties

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.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative 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 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSSL 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 PSSL 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 PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

ATTACHMENT F

HIRE NYC 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, 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>). 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.

ATTACHMENT G

**UNDUE FAMILIARITY AND PREVENTION OF SEXUAL ABUSE OF
INMATES BY STAFF AND OTHER INMATES**



THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION



MEMORANDUM

| | | | | |
|-----------------------------------|------------------------|---|---|---------|
| <input type="checkbox"/> NEW | | <input checked="" type="checkbox"/> REVISED | | SUBJECT |
| EFFECTIVE DATE 02/07/08 | NUMBER 01/08 | PAGE 1 OF 3 PAGES | UNDUE FAMILIARITY AND PREVENTION OF SEXUAL ABUSE OF INMATES BY STAFF AND OTHER INMATES | |

TO : ALL STAFF

FROM : MARTIN F. HORN, COMMISSIONER



This message is addressed to all of you who work in our jails, whether you are an employee of the Department of Correction, an employee of another agency, a volunteer, contractor or vendor. Our collective mission is to keep our jails, the inmates, and staff, safe.

We take pride in providing a safe environment for all individuals who are committed to our custody. It is the professionalism of all of us that has established the Department as a leader in the field of corrections. We maintain high standards of behavior and demand the highest level of integrity.



- The way we behave around inmates is key to our success. We must perform our job with integrity. When boundaries are crossed, we become ineffective and the safety of each of us is threatened.
- Once you accept a gift or favor, introduce a single piece of contraband or single an inmate out for special treatment---with the first letter you carry in or out, the first cigarette you provide, the infraction you quash---the door is opened for the inmate to control you and influence your further actions.

And that becomes a serious threat to the safety of fellow staff and other inmates.

- 'Undue familiarity' is a direct violation of our Rules and Regulations. It is the Department's policy to seek termination of those who violate this rule. This behavior includes any social activity with an inmate that is not directly related to one's duties. Such behavior may involve, for example, the granting of a special favor or privilege, a phone call, accepting of a gift, bringing in contraband, a romantic relationship or at its worst, sexual conduct. Undue familiarity is not only a violation of our rules and regulations, but may also be a criminal offense.
- One of the worst offenses staff can commit is to engage in any sexual conduct with an inmate, or make sexual threats.

| | | | |
|---|-----------------------------------|--|---|
|  | EFFECTIVE DATE 02/07/08 | SUBJECT UNDUE FAMILIARITY AND PREVENTION OF SEXUAL ABUSE OF INMATES BY STAFF AND OTHER INMATES |  |
| | MEMORANDUM | | |
| | NUMBER 01/08 | PAGE 2 OF 3 PAGES | |

- The Department of Correction has zero tolerance for sexual abuse of inmates. **No one** is allowed to have sexual contact with any person who is incarcerated. Other inmates and employees are prohibited from asking, demanding, forcing, or participating in a sexual act with an inmate. This applies to EVERYONE including uniformed and civilian employees of the Department, as well as contractors, vendors, volunteers, and employees of other agencies who work in the jails.
- In addition to the Department policy, New York State Law clearly states that inmates are not able to give consent to sexual conduct with an employee. (Penal Law §130.05, subdivision 3). Individuals considered employees under this law include not only uniformed and civilian employees of the Department, but contractors, vendors, volunteers, employees of other agencies and all other persons who provide a direct service to inmates. In the same way that an underage minor can not consent to sex with an adult, so too an inmate can not consent to sex with employees. **There is no such thing as consensual sex between employees and inmates.** Any such sexual misconduct is a sex crime---whether it occurs inside a correctional facility, during transportation, or at any other time during an inmate's custody.
- The personal consequences for an employee who has any sexual contact with an inmate or sexually threatens an inmate are severe. Not only will that individual be terminated but they will also be arrested and criminally prosecuted. **If convicted they face imprisonment and registration as a sex offender.** The employee may also be required to pay monetary damages to the inmate out of his or her own pocket.
- This illegal behavior also poses a grave risk to all staff. The offending employee has totally compromised himself or herself, no different than if he or she were to smuggle weapons to an inmate.
- All allegations of sexual abuse and sexual threats will be investigated promptly and thoroughly.
- You all play a critical role in identifying and preventing a potential incident of sexual abuse, and responding if such an incident occurs.
- Equally important to us is the protection of inmates from sexual assaults by other inmates. The Department prohibits sexual acts between inmates, whether voluntary or coerced. Inmates who are observed engaging in a sexual act or soliciting a sexual act with another inmate must be ordered to cease their actions. Where the sex is voluntary, infractions will be processed for all the involved parties. Inmates who commit sexual abuse or assaults will be re-arrested and prosecuted to the full extent of the law. **Employees who fail to stop such assaults as they are occurring and/or fail to report them are subject to disciplinary action, including termination.** Inmates who are victims or in danger must be protected.

| | | | |
|---|-----------------------------------|--|---|
|  | EFFECTIVE DATE 02/07/08 | SUBJECT UNDUE FAMILIARITY AND PREVENTION OF SEXUAL ABUSE OF INMATES BY STAFF AND OTHER INMATES |  |
| | MEMORANDUM | | |
| | NUMBER 01/08 | PAGE 3 OF 3 PAGES | |

- Each of us is responsible for being alert to signs of potential situations in which sexual abuse might occur as well as signs of victimization. And all of us also have the duty to report any knowledge or information we may have about an employee who sexually abuses or engages in undue familiarity with an inmate. You may either contact the Department of Investigation confidentially (numbers are posted in the facilities) or, DOC employees may report to the Tour Commander. You must report, or you will face disciplinary action yourself. All allegations must be reported.
- Any employee who receives a report of inmate-on-inmate sexual abuse, must immediately notify their supervisor. An employee who intentionally fails to report such information will be subject to disciplinary charges.
- There is another role for staff to play in the prevention of sexual abuse of inmates, and that is to encourage inmates to report sexual abuse as well as any other concerns about their safety. If an inmate makes an allegation against staff or other inmates they will be offered immediate protection, medical examination and mental health services and counseling by our chaplains. And the complaint will be reported to the appropriate law enforcement officials and thoroughly investigated. We need your help in getting that message out to the inmates so that they will not be afraid to come forward if they are being victimized.

The Department is very proud of its work force and all of you who come to work day in and day out and perform your jobs professionally, with integrity. Our tradition of excellence requires that we all join together and do everything possible to make sure our zero tolerance policy is part of our culture and value system, because it is the right thing to do!


 MARTIN F. HORN
 COMMISSIONER

Attachment:

Directive #5010, Preventing Inmate Sexual Abuse, dated 05/01/07 (as amended).

Supersedes:

Memorandum #02/07, UNDUE FAMILIARITY AND PREVENTION OF SEXUAL ABUSE OF INMATES BY STAFF AND OTHER INMATES, dated 05/01/07.

Joseph Ponte, Commissioner

Ava B. Rice, Assistant Commissioner

Contracts and Procurement

Agency Chief Contracting Officer

Bulova Corporate Center

75-20 Astoria Boulevard, Suite 160

East Elmhurst, NY 11370

Office: 718 546-0690

Fax: 718 278-6205



Dated _____

RE: "Undue Familiarity and Prevention of Sexual Abuse of Inmates by Staff and Other Inmates", Memorandum number 01/08, effective 2/07/08.

Dear Vendor:

All current Department of Correction contractors are required to acknowledge receipt and full compliance of the Agency's current "Undue Familiarity and Prevention of Sexual Abuse of Inmates by Staff and Other Inmates," which is attached to this memorandum. You have ten (10) days from the date of receipt of this letter to return the signed acknowledgement page in the enclosed self-address envelope. Failure to do so may cause the Agency to commence contract termination procedures.

Please contact me at 718-546-0690 if you have any questions. I may also be reached by email at docacco@doc.nyc.gov. In the interim, I thank you for your full cooperation and compliance.

Yours truly,

Ava B. Rice

I hereby acknowledge receipt of the "Undue Familiarity and Prevention of Sexual Abuse by Staff and other Inmates".

Vendor Name

Vendor Representative's Name (Print)

Vendor Representative's Signature

Date

ATTACHMENT H
SECURITY CLEARANCE REQUEST AND
AUTHORIZATION FORM

The City of New York
Department of Correction



Special Operations Division
Rikers Island Security Unit

Form SOD/RISU2 CLEARANCE REQUEST AND AUTHORIZATION FORM Effective 3/16/98

SECTION #1 –

Complete all of the required information in Sections #2, #3 and #4. Submission of a clearance request does not necessitate approval. The command receives Notification of denials via fax and/or in writing. Confirmation of approvals shall be telephonically effected as follows:

Wardens/Commanding Officers or Deputy Wardens shall initiate facility clearance requests. All other commands (bureaus, divisions or units) – Senior Staff Members or Commanding Officers or Executive Officers, only. It is the responsibility of each facility/command to ensure that visitors are advised of the security/safety issues of the Riker's Is. Correctional Complex (e.g., speed limit, securing vehicles, display of ID/pass, unauthorized items)

| Category | Clearance Location | Telephone # |
|-----------------------|-------------------------------|----------------|
| Vehicle Access/Pass | Construction Control Trailer | (718) 546-1578 |
| Public Transportation | Rikers Is. Main Control Bldg. | (718) 546-1565 |
| Problems/Information | Rikers Is. Clearance Office | (718) 546-1539 |

SECTION #2 – Command Requests / Escort Information

| | | | | | |
|---|--|-------------|--------------|----------|------------------------------------|
| Date Requested: | Requested By (Print Last and First Name) | Rank/Title: | Shield/ID# | Command | Telephone #: |
| Uniform Escort Provided? <input type="checkbox"/> Yes <input type="checkbox"/> No | Escort Officer (Print Last and First Name) | Rank: | Shield #: | Command: | Telephone #: (___) ___ - ____ |
| Command Authorization <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied | Sr. Staff/Comm. Off./Dep. Warden/Exec. Off.: | Rank/Title: | Shield/ID #: | Command: | Telephone #: |

SECTION #3 – Clearance / Visit Information - COMPANY NAME:

| Date of Visit: | Visitors' Full Name | Title | Visitors' Full Name | Title | Vi si t i t y | Title |
|----------------------------|---------------------|-------|---------------------|-------|------------------------------|-------|
| | 1. | | 6. | | | 11. |
| Estimated Time of Arrival: | 2. | | 7. | | | 12. |
| | 3. | | 8. | | | 13. |
| Agency / DOC Affiliation | 4. | | 9. | | | 14. |
| | 5. | | 10. | | | 15. |

Destinations (Check All That Apply):

- | | | | | | |
|-----------------------------------|------------------------------------|---|---|--|--|
| <input type="checkbox"/> ARDC | <input type="checkbox"/> JATC | <input type="checkbox"/> Assets Management/Environmental Health | <input type="checkbox"/> Correction Industries Div./Support Services Unit | <input type="checkbox"/> Riker's Is Main Control Bldg | <input type="checkbox"/> Riker's Is Visitor Control Bldg |
| <input type="checkbox"/> AMKC | <input type="checkbox"/> NIC | <input type="checkbox"/> Bureau Chiefs' Trailer | <input type="checkbox"/> DGS (Dept. of General Sves.) Trailer | <input type="checkbox"/> Transportation Div. | |
| <input type="checkbox"/> CIFM/HHP | <input type="checkbox"/> OBCC/CPSU | <input type="checkbox"/> Chapel | <input type="checkbox"/> Dockhouse/Ferryboats (OBCC Annex) | <input type="checkbox"/> Shore Rd. Trailer (Specify Area/Unit) | |
| <input type="checkbox"/> GMDC | <input type="checkbox"/> RMSC/STEP | <input type="checkbox"/> Chief of Department's Field Office | <input type="checkbox"/> Firehouse/K-9 Unit | <input type="checkbox"/> Special Operations Div. (Specify Area/Unit) | |
| <input type="checkbox"/> GRVC | <input type="checkbox"/> WF/CDU | <input type="checkbox"/> Construction Management Unit | <input type="checkbox"/> Powerhouse | <input type="checkbox"/> Other (Specify Location): | |

| | | | | | | | |
|------------------|---------------------------------------|-----------------------------------|---------------------------------|--|---------------------|---|--|
| Reason For Visit | <input type="checkbox"/> Construction | <input type="checkbox"/> Delivery | <input type="checkbox"/> Repair | <input type="checkbox"/> Volunteer Work | Type of Access/Pass | <input type="checkbox"/> Gate #1 Restricted | <input type="checkbox"/> East/West Parking Field |
| | <input type="checkbox"/> Clergy | <input type="checkbox"/> Meeting | <input type="checkbox"/> Survey | <input type="checkbox"/> Other (Specify) _____ | | <input type="checkbox"/> Gate #2 Restricted | <input type="checkbox"/> Gate #1 Unrestricted |
| | | | | | | | <input type="checkbox"/> Other (Specify) _____ |

SECTION #4 – Vehicle Information

Check Here if None In the event the number of vehicles exceeds four (4), attach additional vehicle information on a 600ar.

| Vehicle | Year | Make | Model | Color | License Plate | State | Vehicle Type | | | | | | | |
|---------|------|------|-------|-------|---------------|-------|------------------------------|------------------------------|------------------------------|--------------------------------|--------------------------------|--|--|--|
| #1 | | | | | | | <input type="checkbox"/> Car | <input type="checkbox"/> Van | <input type="checkbox"/> Bus | <input type="checkbox"/> Truck | <input type="checkbox"/> Other | | | |
| #2 | | | | | | | <input type="checkbox"/> Car | <input type="checkbox"/> Van | <input type="checkbox"/> Bus | <input type="checkbox"/> Truck | <input type="checkbox"/> Other | | | |
| #3 | | | | | | | <input type="checkbox"/> Car | <input type="checkbox"/> Van | <input type="checkbox"/> Bus | <input type="checkbox"/> Truck | <input type="checkbox"/> Other | | | |
| #4 | | | | | | | <input type="checkbox"/> Car | <input type="checkbox"/> Van | <input type="checkbox"/> Bus | <input type="checkbox"/> Truck | <input type="checkbox"/> Other | | | |

SECTION #5 – FOR SOD USE ONLY:

| | | | | |
|--|-----------------------------------|---|--|--|
| Date Received: / / | Reviewed By (Clearance Officer) | Rank: | Shield #: | SOD Time Stamp |
| Time Received: : hr. | Approved By (SOD/RISU Supervisor) | Rank: | Shield #: | |
| Final Determination <input type="checkbox"/> Approved <input type="checkbox"/> Denied | Type of Access/Pass: | <input type="checkbox"/> Gate #1 Restricted | <input type="checkbox"/> East/West Parking Field | |
| | | <input type="checkbox"/> Gate #2 Restricted | <input type="checkbox"/> Gate #1 Unrestricted | <input type="checkbox"/> Other (Specify) _____ |

Remarks:

ATTACHMENT I

**SECURITY REQUIREMENTS FOR ALL WORK
PERFORMED ON RIKERS ISLAND**

SECURITY REQUIREMENTS FOR CONTRACTORS ON RIKERS ISLAND AND BOROUGH FACILITIES

All contractors and their employees including sub-contractors must comply with all security and traffic regulations instituted by the Department of Correction.

For the purpose of these security requirements, sub-contractors and their employees shall be considered employees of the contractor. Contractors are responsible for informing all subcontractors of these requirements. When the term contractor is used herein it shall mean contractor and sub-contractor.

S1: IDENTIFICATION OF EMPLOYEES

1. All contractors and their employees who have authorized business at a DOC facility are required to report for identification and approval at established security control points.
2. Each contractor shall furnish its employees with an identification (ID) card. The ID card shall be standard size (approximately 2 inches by 3 inches), laminated and furnished with either a clip or light chain so that it may be secured to the person wearing it. The ID cards shall be sequentially numbered and contain the following:
 - The company name;
 - A recognizable photo of the employee;
 - The employee's printed name and signature; and
 - Expiration date.
3. These ID cards are typically exchanged at a facility for an institutional pass when the employee enters the facility. ID cards/institutional passes must be prominently displayed and secured while the wearer is at a DOC facility. Additionally, identification must be produced upon demand of Department of Correction personnel assigned to various checkpoints, as well as security patrols.
4. The loss of any ID card or institutional pass must be reported immediately to the nearest officer on duty. The officer shall then promptly notify his/her supervisor who shall then take appropriate action.

S2: DELIVERING MATERIAL AND EQUIPMENT TO JOB SITES

1. Contractors must obtain clearance for all deliveries to and removals from Department facilities of material and equipment. All employees reporting for business (non-delivery staff) shall arrive at the main entrance of the respective facility and abide by that facility's security procedures.
2. All vehicles and material contained therein are subject to random searches and inspections. Searches may involve the use of the Canine Unit.

S3: CONTRACTOR'S VEHICLES

1. Drivers of contractor vehicles intending to drive to Rikers Island are directed to report to the security control point on the date and time of the scheduled delivery. The driver will be required to produce the following current and valid documents to the officer:
 - i. A drivers license;
 - ii. The vehicle's registration; and
 - iii. Vehicle Insurance Card.

Additionally, all occupants of the vehicle will be required to produce their employee ID cards and some form of government issued identification with photo (i.e., Driver's license) to the officer.

Upon producing the above noted documents to the officer's satisfaction, the officer will issue the driver a vehicle access pass and allow the driver and the occupants of the vehicle access to Rikers Island.

Note: Access to Rikers Island and/or any Department of Correction facility shall be limited to employees of the contractors (as described herein). Employees shall remain on Rikers Island and/or in the facility for only the time needed to carry out their business.

2. The vehicle access pass must be prominently displayed in the windshield inside the vehicle at all times.
3. Vehicles must be secured when not occupied. The vehicle must be turned off and the ignition key must be removed. Additionally, all windows must be closed and doors and trunks locked.
4. Vehicles are not permitted to be left at DOC facilities or on DOC Property at the conclusion of each workday.
5. Vehicle access passes and any issued DOC identification cards/tags must be turned in upon leaving Rikers Island.
6. All vehicles are subject to a search at any time while on Rikers Island or on the grounds of any DOC facility and also will be searched prior to departing Rikers Island and borough facilities. Searches will include a visual inspection of the vehicle's trunk, passenger and/or cargo compartment and the undercarriage. Additionally, all vehicle occupants will be required to produce their identification cards prior to departing Rikers Island or any DOC facility.

S4: TRAFFIC REGULATIONS

1. Drivers shall obey all posted traffic regulations and speed restrictions.
2. Passing vehicles on the Rikers Island Bridge is strictly prohibited.

3. Drivers and the occupants of their vehicles must produce their identification at all checkpoints.
4. Drivers must yield to all emergency vehicles.
5. The maximum weight limit on Rikers Island Bridge is 36 Tons.

S5: SECURITY PROCEDURES AND ISSUES

1. Contractors and their employees must remain within the physical limits of their work area. Contractors are forbidden to move into any other area on the Island. There is no walking permitted on Rikers Island outside of the respective work site or delivery destination.
2. Contractors, subcontractors, and their employees are forbidden to take or bring in to a DOC facility, any articles for an inmate.
3. Contractors and their employees shall not contact, or communicate with or give anything to inmates.
4. Contractors and their employees shall not possess on their person any contraband as described in paragraph #7 of this section.
5. The personal vehicles of the contractor's employees are not permitted on Rikers Island or at Borough facility loading docks. No personal vehicles will be permitted to enter a DOC facility.
- 6.a. Food or lunch packages of the contractor's employees are subject to inspection by Department of Correction custodial personnel.
- b. No food services are available to contractor's employees at DOC facilities.
- 7.a. Arrest and prosecution will follow violations of Sections 205.00, 205.20 and 205.25 of the New York State Penal Law, which are summarized as follows:

SECTION 205.00.3 Contraband means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation or order.

SECTION 205.00.4 Dangerous contraband means contraband which is capable of such use as may endanger the safety or security of a detention facility or any person therein.

SECTION 205.20 A person is guilty of promoting prison contraband in the second degree when:

1. He knowingly and unlawfully introduces any contraband into a detention facility.

SECTION 205.25 A person is guilty of promoting prison contraband in the first degree when:

1. He knowingly and unlawfully introduces any dangerous contraband into a detention facility.
- b. Contraband is described as any article, the presence of which, within the prison may jeopardize safety, security and good order, or impair the moral and physical welfare of prisoners or employees, or which is prohibited by Rules and Regulations of any institution.
- c. Items that are considered contraband include but are not limited to: unauthorized clothing, unattended tools, loose or unattended vehicle keys, knives, and items to be considered as such, prescription and over the counter medicines, spices, alcoholic beverages, money in the possession of inmates, tobacco and tobacco related products (see Section S7), unauthorized written communications to and from inmates that were not processed through the institutional mail rooms, unauthorized packages and carrying cases, as well as unsafe conditions of articles which in the opinion of the Warden would affect the security of the institution.
8. The introduction of electronic/recording devices into any facility without the approval of the Commanding Officer of that facility is strictly prohibited. Electronic/recording devices are defined as any type of instrument, which is designed to transmit and/or receive telephonic, electronic, digital, cellular or radio communication as well as any type of instrument designed to have sound and/or image recording or capturing capabilities. Examples of electronic/recording devices include but are not limited to: cellular or digital phones, any type of pager, two-way radio, text messaging or modem devices, cameras (digital or film), video recorders and tape or digital recording devices.
9. Any violation of the policies and procedures described herein or of any law, Departmental rule and regulation or institutional policy or procedure may result in criminal prosecution (when applicable) and/or the violating individual being banned from future access to Rikers Island or any Departmental facility.

S6: CONDUCT OF CONTRACTORS AND THEIR EMPLOYEES

1. The New York City Department of Correction has a zero tolerance policy with regard to sexual abuse and sexual threats directed at inmates in its custody. **No one** is allowed to have sexual contact with any person who is incarcerated. Other inmates and staff are prohibited from asking, demanding, forcing or participating in a sexual act with an inmate. This applies to EVERYONE including contractors, vendors, volunteers and employees of other agencies who work in the jails

2. Rikers Island and all Department of Correction facilities are secure facilities. Any person working within secure areas shall exercise extreme caution at all times. Each contractor and its employees must comply with the following security regulations of the Department of Correction:
 - a. Personal identification must be produced on demand by the Department of Correction personnel assigned to checkpoints and security patrols.
 - b. Employees must remain in the area of their work assignment.
 - c. Employees shall not bring any article, letters, notes or messages on the premises for the purpose of giving them to an inmate.
 - d. Employees shall not take any article, letters, notes or messages from an inmate to any other person including another inmate.
 - e. Employees shall not bring alcoholic beverages (beer, wine or liquor) on the premises at any time. Nor shall employees bring drugs or medicines except those required to stock the first aid cabinets in the contractor's field offices.
 - f. Contractors and their employees are prohibited from burning and/or dumping any refuse, debris or rubble on Department property.
 - g. When one person engages in conduct, which constitutes a criminal offense, another person is criminally liable for such conduct when, acting with the culpability required for the commission thereof, he or she solicits requests, commands, importunes, or intentionally aids such person to engage in such conduct.

S7: SMOKING PROHIBITION

1. The Department of Correction maintains a smoke-free environment in accordance with Local Law 47 of 2002, the Smoke Free Air Act which prohibits smoking in public places and workplaces. The following restrictions and procedures apply to all contractors and their employees.
 - a. The use of tobacco related products within any Department facility, office, and vehicle is prohibited;
 - b. This prohibition applies to all persons, including staff, inmates, and visitors;
 - c. In addition to the smoking restrictions, contractors and their employees are prohibited from introducing any type of tobacco products and lighting agents into any department premises that houses or detain inmates, or utilize inmate work details, including the entire area of Rikers Island.

For the purpose of this document, tobacco products include but are not limited to cigarettes, cigars, pipes, loose tobacco and rolling paper. Lighting agents include cigarette lighters and matches.

2. a. Inmates are prohibited from smoking and possessing any form of tobacco products including but not limited to cigarettes, lighting agents, cigars, pipes, loose tobacco and rolling paper.
- b. Any contractor or employee providing an inmate tobacco related products shall be deemed as promoting prison contraband and shall be subject to arrest.

Joseph Ponte, Commissioner

Ava B. Rice, Assistant Commissioner

Contracts and Procurement

Agency Chief Contracting Officer

Bulova Corporate Center

75-20 Astoria Boulevard, Suite 160

East Elmhurst, NY 11370

Office: 718 546-0690

Fax: 718 278-6205



Dated _____

RE: Security Requirements

Dear Vendor:

All current Department of Correction contractors are required to acknowledge receipt and full compliance of the Agency's current "Security Requirements," which is attached to this memorandum. You have ten (10) days from the date of receipt of this letter to return the signed acknowledgement page in the enclosed self-address envelope. Failure to do so may cause the Agency to commence contract termination procedures.

Please contact me at 718-546-0690 if you have any questions. I may also be reached by email at docacco@doc.nyc.gov. In the interim, I thank you for your full cooperation and compliance.

Yours truly,

Ava B. Rice

I hereby acknowledge receipt of the "Security Requirements".

Vendor Name

Vendor Representative's Name (Print)

Vendor Representative's Signature

Date

Contract No.

**THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION**

**PER DIEM NURSES FOR AN EXPANDED INFECTION CONTROL PROGRAM
FOR THE SCREENING OF TUBERCULOSIS, HEPATITIS IMMUNIZATIONS,
FLU VACCINE, RESPIRATORY PROTECTION AT VARIOUS NYC
DEPARTMENT OF CORRECTION FACILITIES.**

Procurement Identification Number

PIN: 072201744HMD

(EPIN): 07217B0017