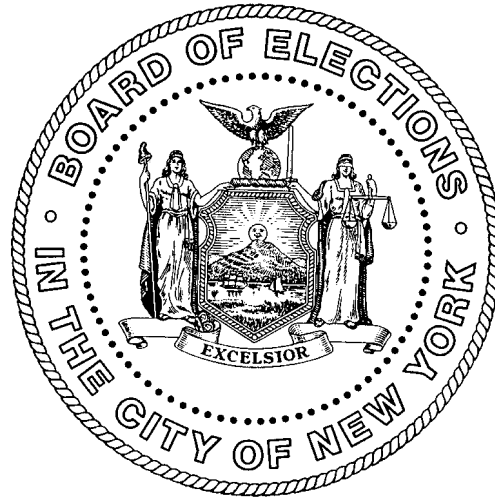


BOARD OF ELECTIONS IN THE CITY OF NEW YORK



INVITATION FOR BIDS

INFORMATION FOR BIDDERS, CONTRACT SPECIFICATIONS,
BID PAGES AND AGREEMENT

FOR FURNISHING ALL LABOR AND MATERIAL NECESSARY
AND REQUIRED FOR:

PRODUCTION OF BOARD OF ELECTIONS POLL WORKER
TRAINING VIDEO FOR PER DIEM POLL WORKERS

From September 1, 2009 through September 30, 2010

Procurement Identification Number: (PIN #) 003200933109

The New York City Comptroller is charged with the audit of contracts by New York City Government Agencies. 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 1225, New York, New York; telephone number (212) 669-3000.

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PART I. INFORMATION FOR BIDDERS

1. DESCRIPTION OF PROCUREMENT

The Board of Elections in the City of New York seeks Production and Duplication of a Poll Worker Training Video for per diem poll workers. The successful Bidder will furnish all labor and materials necessary and required for the provision of Poll Worker Training Video Services.

TERM: The term of any contract that may result from this Invitation for Bids shall be from September 1, 2009 through September 30, 2010

2. TIME AND PLACE FOR RECEIPT OF BIDS

- a. Sealed bids shall be received by the Board, on or before the day, at the time and at the location set forth below:

Time: 10:00 A.M.
Date: August 13, 2009
Place: Board of Elections
Procurement Department
32 Broadway, 7th Floor
New York, NY 10004
Attention: Gwendolyn Youngblood CPPB, Deputy ACCO
212-487-7213

- b. SUBMISSION OF THE SEALED BID

Bidder's shall submit the completely executed Bid in a sealed envelope, prominently and clearly marked and/or labeled as follows: The name of the bidding organization, the title of the procurement (Production of Board of Elections Poll Worker Training Videos), PIN number (003200933109), Bid due date and time, and the notation "ATTENTION PROCUREMENT DEPARTMENT: SEALED BID. DO NOT OPEN. FORWARD DIRECTLY TO GWENDOLYN YOUNGBLOOD CPPB, Deputy Agency Chief Contracting Officer. The completed bid must be submitted in a sealed envelope on or before the time and at the place indicated in the Invitation for Bids. **THE BID PRICE TABLE 2 & 3 PRODUCTION COST PER CATEGORY PAGE NEED TO BE SUBMITTED IN A SEPARATE ENVELOPE. (PAGES: 23 AND 24)** The bid and all other documents requiring signatures must be signed and where indicated notarized. PLEASE NOTE: The following pages contain blanks to be completed by the bidder or spaces for the bidder's signature: **Pages 22- 31; 54-56; 68, 69, 73 and 74.**

3. INVITATION FOR BIDS AND CONTRACT DOCUMENTS

- a. 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 Invitation for Bids.
1. The Advertisement and Proposal for Bids.
 2. The Bid.
 3. The Agreement.

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4. The Specifications.
 5. All addenda issued by the Commissioner prior to the receipt of bids.
 6. All provisions required by law to be inserted in this contract whether actually inserted or not.
 7. The Notice of Award.
- b. For particulars as to this procurement, including quantity and quality of the purchase, extent of the work or labor to be performed, delivery and performance schedule, and any other special instructions, prospective Bidders are referred to the Invitation for Bids documents. A copy of such documents can be obtained at the location set forth Part I.
 - c. Deposit for Copy of Invitation for Bids Documents - Prospective Bidders may obtain a copy of the Invitation for Bids documents by complying with the conditions set forth in the advertisement for bids. The deposit required must be in the form of a certified check made payable to the order of the City of New York, and drawn upon a state or national bank or trust company, or of a check of such bank or trust company signed by a duly authorized officer thereof.
 - d. Return of Deposit - Such deposit will be returned within 30 days after the award of the contract or the rejection of all bids as set forth in the advertisement provided the Invitation for Bids documents are returned to the Contract Clerk of the Agency in physical condition satisfactory to the Commissioner.
 - e. Additional Copies - Additional copies of the Invitation for Bids documents may be obtained, subject to the conditions set forth in the advertisement for bids.

4. PRE-BID CONFERENCE – NOT REQUIRED

5. AGENCY CONTACT

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

Name: Gwendolyn Youngblood CPPB, Deputy ACCO
Address: Board of Elections
32 Broadway, 7th Floor
New York, NY 10004
Telephone: 212-487-7213
Fax: 212-487-5343

6. EXAMINATION OF PROPOSED CONTRACT

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

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documents, and binding on all Bidders, whether or not actual notice of such addendum is shown.

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

7. FORM OF BID

Each bid must be submitted upon the prescribed form and must contain:

- a. the name, residence and place of business of the person or persons making the same;
- b. the names of all persons interested therein, and if no other person is so interested, such fact must be distinctly stated;
- c. 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;
- d. a statement that no Council person or other officer or employee or person whose salary is payable in whole or 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;
- e. a statement that the Bidder is not in arrears to the City or to any agency upon a debt or contract or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City to any agency thereof, except as set forth in the bid.

8. BIDDER'S OATH

- a. The bid shall be properly signed by an authorized representative of the Bidder and the bid shall be verified by the written oath of the authorized representative who signed the bid, that the several matters stated and information furnished therein are in all aspects true.
- 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.

9. SITE VISIT

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

10. BIDS SHALL BE TYPEWRITTEN OR WRITTEN LEGIBLY IN INK

The bid shall be typewritten or written legibly in ink. The bid shall be signed in ink. Erasures or alterations shall be initialed by the signer in ink. Failure to conform to the requirements of this paragraph 10 shall result in rejection of the bid.

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11. TELEGRAPHIC OR MAILGRAM BIDS (OPTIONAL)

If provided for in the bid advertisement, telegraphic or mailgram bids shall be considered provided that they meet the following requirements:

- a. The telegraphic or mailgram bid must be received by an agent in an office other than a City office and the hard copy of the telegraphic or mailgram bid delivered by the agent in a sealed envelope to the designated office by the time and date set for receipt of bids.
- b. Telegraphic or Mailgram bids shall contain:
 - (i) Specific reference to the Invitation for Bids;
 - (ii) The items, quantities and prices for which the bid is submitted;
 - (iii) The time and place of delivery of the bid; and
 - (iv) A statement that the Bidder agrees to all the terms, conditions and provisions of the Invitation for Bids.

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.

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

The Bidder shall identify those portions of its bid that it deems to be confidential, proprietary information or trade secrets, and provide justification why such materials shall not be disclosed by the City. All materials the Bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word "Confidential". Such materials stamped "Confidential" must be easily separable from the non-confidential sections of the bid.

All such materials so indicated shall be reviewed by the 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 and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the Bidder.

16. PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

Bids may be modified or withdrawn by written notice received in the office designated in Section 2, above, before the time and date set for the bid opening. A telegraphic or Mailgram modification or withdrawal shall be effective provided it was received in the manner set forth in Section 3-02(j) of the Procurement Policy Board Rules.

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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

In accordance with the New York City Charter, the Procurement Policy Board Rules and the terms and conditions of this Invitation for Bids, this contract shall be awarded, if at all, to the responsible Bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids, and whose bid price is either the most favorable bid price or, if the Invitation for Bids so states, the most favorable evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids.

(i) Negotiations with the Apparent Lowest Responsive and Responsible Bidder:

Upon determination of the apparent lowest responsive and responsible Bidder and prior to award, the Contracting Officer may elect to open negotiations with the selected Bidder in an effort to improve the bid to the City with respect to price only. In the event the selected Bidder declines to negotiate, the Contracting Officer may let to either award the contract to the apparent lowest responsive and responsible Bidder or may, upon written approval by the Agency Chief Contracting Officer, reject all bids in accordance with Section 22(c) of this Information for Bidders, below. The only other circumstance in which negotiations may be conducted with any Bidder are those set forth in Section 22(c) of this Information for Bidders, 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 Bids if that bid is not also the most favorable bid.

18. LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS

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

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

19. WITHDRAWAL OF BIDS

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 the opening of bids; thereafter, a Bidder may withdraw its bid only in writing and in advance of an actual award. 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 his option, may ask to be relieved of his obligation to perform the work called for by written notice to the Commissioner. If such notice is given to the Commissioner, and the request to withdraw is granted, the Bidder waives all claims in connection with this agreement.

20. MISTAKE IN BIDS

a. Mistake Discovered Before Bid Opening

A Bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 14, above.

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- b. Mistakes Discovered Before Award
1. In accordance with Chapter Three, Section 3-02(m) of the Procurement Policy Board Rules, if a Bidder alleges a mistake in bid after bid opening and before award, the bid may be corrected or withdrawn upon written approval of the Agency Chief Contracting Officer and Department Counsel if the following conditions are met:
 - (i) Minor Informalities. Minor informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other Bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the Bidder to correct them depending on which is in the best interest of the City.
 - (ii) 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.
 - (iii) Mistakes Where Intended Correct Bid is Not Evident. A Bidder may be permitted to withdraw a low bid if:
 - a) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - b) the Bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
 - c) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the City Chief Procurement Officer subject to the approval of Corporation Counsel makes a written determination that it would be unconscionable not to allow the mistake to be corrected.
 2. Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this Article shall be withdrawal of that bid, and the return of the bid bond or other security, if any, to the Bidder. Thereafter, the agency may, in its discretion, award the contract to the next lowest Bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited.

21. LOW TIE BIDS

- a. When two or more low responsive bids from responsible Bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation for Bids, the Agency Chief Contracting Officer will break the tie in the following manner and order of priority:
 - i) Award to a certified New York City small minority or woman-owned business entity Bidder;
 - ii) Award to a New York City Bidder;
 - iii) Award to a certified New York State small, minority or woman-owned business Bidder;
 - iv) Award to a New York State Bidder.

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

22. REJECTION OF BIDS

- a. Rejection of Individual Bids. The Commissioner may reject a bid if:
- (1) The Bidder fails to furnish any of the information required pursuant to Section 24 hereof; or if
 - (2) The Bidder is determined to be not responsible pursuant to the Procurement Policy Board Rules; or if
 - (3) The bid is determined to be non-responsive pursuant to the Procurement Policy Board Rules.
 - (4) The bid, in the opinion of the Agency Chief Contracting Officer, 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 Section 16.
- b. Rejection of All Bids. The Department, upon written approval by the Agency Chief Contracting Officer, may reject all bids and may elect to re-solicit bids if in its sole opinion it shall deem it in the best interest of the City so to do.
- c. Rejection of All Bids and Negotiation With All Responsible Bidders. The Agency may determine that it is appropriate to cancel the Invitation for Bids after bid opening and before award and to complete the acquisition by negotiation. This determination shall be based on one of the following reasons:
- (i) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the Agency Chief Contracting Officer cannot determine the reasonableness of the bid price, or no responsive bid has been received from a responsible Bidder; or
 - (ii) In the judgment of the Agency Chief Contracting Officer the bids were not independently arrived at in open competition, or were submitted in bad faith.

When the Commissioner has determined that the Invitation for Bids is to be canceled and that use of negotiation is appropriate to complete the acquisition, the contracting officer may negotiate and award the contract without issuing a new solicitation subject to the following conditions:

- (i) Prior notice of the intention to negotiate and a reasonable opportunity to negotiate have been given by the contracting officer to each responsible Bidder that submitted a bid in response to the Invitation for Bids;
- (ii) The negotiated price is the lowest negotiated price offered by any responsible Bidder; and
- (iii) The negotiated price is lower than the lowest rejected bid price of a responsible Bidder that submitted a bid in response to the Invitation for Bids.

23. RIGHT TO APPEAL DETERMINATIONS OF NON-RESPONSIVENESS OR NON-RESPONSIBILITY AND RIGHT TO PROTEST SOLICITATIONS AND AWARD

The Bidder has the right to appeal certain determinations of non-responsiveness and any determination of non-responsibility and has the right to protest a solicitation and award. For further information concerning these rights, the Bidder is directed to Chapter 2, Section 2-08 and Chapter 4, Section 4-09, respectively, of the Procurement Policy Board Rules.

24. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

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

25. VENDEX QUESTIONNAIRES

Pursuant to Administrative Code §6-116.2 and Section 2-08 of the Rules of the Procurement Policy Board (9 RCNY§4-02), Bidders may be obligated to submit completed VENDEX Questionnaires subsequent to the identification of the low responsive Bidder. Generally, if this bid will be \$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 received from City Contractors over the past twelve months, equals or exceeds \$100,000, VENDEX Questionnaires must be completed and submitted within a reasonable time of the low responsive Bidder's receipt of blank VENDEX Questionnaires from the Department. Any questions concerning this requirement must be submitted to the Agency Chief Contracting Officer or the contact person for this contract. VENDEX Questionnaires do not need to be submitted as part of this bid at this time. By submission of a bid, the Bidder agrees that, if identified by the Department as the low and responsive Bidder, the Bidder shall return full, complete, and accurate VENDEX Questionnaires within ten (10) business days of their receipt from the Department.

26. AUDIT / COMPLAINTS

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 1225, New York, New York 10007; telephone number (212) 669-3000.

27. BID SECURITY – Not Required

- a. Bid Bond. If required in the Schedule of Bonds and Liability Insurance in this Invitation for Bids, no bid will be received or considered which is not accompanied by a Bid Bond (in the form set forth herein) issued by a surety company which is authorized to do business in the State of New York.
- b. The Bid Bond shall insure the City of New York to the extent of not less than 10% of the amount of the Bid Contract Price.
- c. In lieu of a Bid Bond, the bid may be accompanied by a deposit in approximately the sum of 2% of the amount of the Bid Contract Price. Such deposit shall consist of a certified check upon a state or national bank or trust company or a check of such bank or trust company signed by a duly authorized officer thereof, drawn to the City which the Comptroller shall approve as of equal value with the sum so required.

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- d. The bid deposit, in whatever form, must not be enclosed in the envelope containing the bid, but must be submitted separately to the Commissioner's representative upon presentation of the bid.
- e. The Bid Bond or certified check as the case may be, shall assure the City of New York and the Department of the adherence of the Bidder to its bid and the execution of the contract, in form as annexed hereto, if its bid is accepted.
- f. Return of Bid Security
 - (i) Within ten (10) days after the bid opening, the Comptroller will be notified to return the deposits of all but the three (3) lowest Bidders. Within (5) days after the award, the Comptroller will be notified to return the deposits of the remaining two unsuccessful Bidders.
 - (ii) 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 performance and payment bonds are not required, only after the sum retained under Article 21 of the Agreement equals the amount of the bid security.
 - (iii) Where all bids are rejected, the Comptroller will be notified to return the deposit of the three (3) lowest Bidders at the time of rejection.

28. PERFORMANCE BOND – Not Required

If required in the Schedule of Bonds and Liability Insurance in this Invitation for Bids, the successful Bidder shall, prior to or at the time of the execution of the contract deliver to the City an executed bond in form prescribed herein, and having as surety thereunder, such surety company or companies as are approved by the Comptroller, in the amount set forth in said Schedule of Bonds and Liability Insurance to secure the faithful performance and completion of the contract.

29. PAYMENT BOND – Not Required

If required in the Schedule of Bonds and Liability Insurance in this Invitation for Bids, the successful Bidder shall, prior to or at the time of the execution of the contract deliver to the City an executed bond in form prescribed herein, and having as surety thereunder, such surety company or companies as are approved by the Comptroller, in the amount set forth in said Schedule of Bonds and Liability Insurance, as security for the payment for all persons performing Labor or furnishing materials in connection with the contract.

30. DEPOSITS-- Not Required

- a. In lieu of a performance or payment bond, the successful Bidder may deposit with the Comptroller money or an obligation of the City of New York which the Comptroller shall approve as of equal value with the amount of the bond or bonds required in the Schedule of Bonds and Liability Insurance.
- b. Whenever the successful Bidder deposits obligations of the City of New York in lieu of a performance or payment bond, the Comptroller may sell and use the proceeds thereof, for any purpose for which the principal or surety on such bond would be liable under the terms of the contract. If money is deposited with the Comptroller, the successful Bidder shall not be entitled to receive interest on such money from the City.

31. FAILURE TO EXECUTE CONTRACT

In the event of failure of the successful Bidder to execute the contract and furnish any required security and insurance, within ten (10) days after notice of the award of the contract, the deposit of the successful Bidder or so much thereof as shall be applicable to the amount of the award made shall be 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 required reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the Bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid.

32. POWER OF ATTORNEY

Attorneys in fact who sign performance or payment bonds must file with each bond a certified copy of their power of attorney to sign said bond or bonds.

33. FINANCIAL QUALIFICATIONS

- a. The Department may require any Bidder or prospective Bidder to furnish all books of account, records, vouchers, statements or other information concerning the Bidder's financial status for examination as may be required by the Department to ascertain Bidder's responsibility and capability to perform the contract.
- b. If the Bidder fails or refuses to supply any of the documents or information set forth in paragraph (a) hereof or fails to comply with any of the requirements thereof, the Department may reject the bid.

34. DIV. OF LABOR SERVICES SUPPLY AND SERVICE EMPLOYMENT REPORT

- a. Who Must File A Complete Employment Report

In accordance with Executive Order No. 50 (1980) as modified by E.O. 108 (1986) the filing of a completed Employment Report (ER) is a requirement of doing business with the City of New York if the Contractor meets all of the following conditions:

1. it has been identified as the lowest Bidder for a supply or service contract or your proposal for supplies or services has been accepted;
 2. the contract value exceeds \$50,000;
 3. its firm employs 50 or more people.
 4. Suppliers, subcontractors or vendors performing on the contract who meet conditions 2 and 3 also must file an ER.
- b. Who Must File A Less Than 50 Employees Certificate:
 1. Contractors or any of their facilities performing on the contract who have fewer than 50 employees, although the contract value exceeds \$50,000, need only submit a "Less Than 50 Employees Certificate".
 2. Any subcontractor, supplier or vendor to the prime Contractor and any of its facilities performing on the contract having fewer than 50 employees, although the subcontract value exceeds \$50,000, need only submit the "Less Than 50 Employees Certificate".

The Department will provide all applicable Division of Labor Services materials to the low and responsive Bidder within a reasonable amount of time from the bid opening. By submitting a bid, the

PRODUCTION OF BOARD OF ELECTIONS POLL WORKER TRAINING VIDEO
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Bidder agrees that the Bidder, if identified as the low and responsive Bidder, will return to the Department all required Labor Services materials within ten (10) business days of their receipt.

35. *PROCUREMENT POLICY BOARD RULES*

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

36. *BID SHEETS*

Please use the Bid Sheets in Part III, Bid Book for your unit price quotations and projected Total Costs for the term of the contract.

37. *CONTRACTOR'S INVOICES*

On or about the 15th of each month, the Contractor shall submit a monthly invoice of all money due for work performed during the previous 30-day period, which shall be the period from the beginning to the end of the previous month. Hence, a 15-day lag period will be created.

The monthly invoice shall be dated and numbered sequentially, the first invoice being referred to as No. 1.

Finance Office
New York City Board of Elections
32 Broadway, 7th Floor
New York, New York 10004

PART II. SCOPE OF WORK; SPECIFICATIONS, TERMS & CONDITIONS

1. SCOPE OF WORK

A Background

The Board of Elections in the City of New York (hereinafter the "Board") as provided under section 3-200 of the New York State Election Law is responsible for the following:

1. To conduct fair and honest elections, from local to federal levels.
2. To enfranchise all eligible New Yorkers to register to vote and to practice those rights.
3. To conduct elections, certify the canvass and to retain the official records.
4. Voter outreach and education.
5. Implementation of Help America Vote Act (HAVA).

The Board of Elections in the City of New York intends to enter into a Multi-Step Sealed Bid for all activities associated with the production of an auxiliary aid in the training of 30,000 + poll workers to ensure proper, prompt and polite services to the voting public. The video is intended to serve as a guide to help the poll workers with most situations that commonly occur on Election Day. Work will begin immediately upon contract approval using generic poll site flows and procedures, but there are unknown dates that impact video production – including certification of devices and Commissioner Selection of devices. There will likely be re-scripting and re-shoots required of segments determined to be less than effective and does not meet Commissioner's approval. Also, our experience with the last video was that re-scripting and re-shooting of several video segments was required after initial production due to changes in election law.

Vendor responsibilities include:

1. Devising a script based on supplied outline and a run time of approximately 45 minutes
2. Casting the actors
3. Producing the video
4. Hiring artists and technicians
5. Renting of equipment
6. Purchasing tape stock
7. Scheduling & shooting the Board-approved script
8. Editing the video to a final cut stage, including graphics, titles, and effects
9. Recording any voice-overs, if necessary
10. Post-production editing and scoring of the video until it has met Commissioner approval
11. Delivering a DVD and tape master
12. Obtaining workers' compensation and equipment damage/loss insurance
13. Duplicating and delivering the requested number of DVD copies

2. INTENT

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VIDEO OUTLINE

1. Opening Pep Talk
2. Open Polls
 - Arriving on time
 - Name tags
 - Signage
 - Handling of keys and seals
 - Checking supplies (Description/Explanation of supplies (forms, ballots, etc..))
 - Finding and reading special instructions
 - Setting up the polling area
 - Open the voting equipment (scanner, BMD) and getting them ready for voters
 - Working with AD monitors, general office staff, federal observers, and poll watchers
3. Processing of different voters
 - a. Respecting voter privacy (dos and don'ts)
 - b. Helping voters with language assistance
 - c. Checking if the voter is at the right poll site and directing voter to correct ED/AD
 - d. Checking name in poll books (explain difference between primary and general)
 - e. Handing out voter cards and ballots to voters (explain difference between primary and general)
 - f. Handling changes to voter information (voter moved, voter information changed)
 - g. Handling Affidavit voters (explain difference between primary and general)
 - h. Helping voters with special needs (bearing in mind the sensitivity issues).
 - i. Using the BMD
 - j. Using ADA accessories
4. Troubleshooting
 - a. Using the poll worker manual, reading special instructions, vote notes
 - b. Whom to call in what situation
 - c. What to do in an Emergency situation
 - d. Handling voting equipment breakdowns, paper jams etc...
 - e. Closing Polls
 - f. Closing the polls on the voting equipment
 - g. Procedures related to canvass on election night
 - h. Handling of portable memory devices
 - i. Repacking supplies
 - j. Closing the voting equipment
 - k. Completing forms booklet
 - l. Handing over items to Police Officer
5. Ending Pep Talk

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3. DELIVERY OF DVD's

Delivery of DVD will be to the following Board of Elections Borough Offices:

1. 200 Varick Street
2. 1780 Grand Concourse
3. 345 Adams Street
4. 126-06 Queens Boulevard
5. 1 Edgewater Plaza

*Each borough office will receive an estimated amount of 10,000 DVD's to be delivered upon the Board's final notice of approval of final cut. The Delivery method will be UPS Standard Ground Rate.

***Please Note This Is Only An Estimate The Board Will Notify Vendor Of Actual Amounts to Be Delivered**

4. BIDDERS' EXPERIENCE AND RESOURCES:

Minimum Qualifications: Bidders will be requested to document their experience and qualifications. Bidding organizations must have been licensed and regularly engaged for at least two (2) years (as of the date bids are due) in the business of providing Production of Training Videos at volumes approximately equal to or greater than the estimated quantity of recording required in the bid pages. In order to make a sound determination of the responsibility of the apparent lowest responsible and responsive Bidder, the Board reserves the right to verify any information submitted in response to this solicitation. The Board also reserves the right to request and obtain from bidding organizations additional information sufficient, in the sole discretion of the Board, to enable a finding as to the capability of the bidding organization to perform the required services.

5. REQUIRED COVER LETTER

All bidding organizations must furnish evidence satisfactory to the Board of Elections of: (1) the Bidder's experience in providing production of training video services, and (2) business reliability and integrity.

A. Documentation of Bidders' Experience and Qualifications: The Bidder must submit, as part of this bid, a cover letter on the Bidder's letterhead, signed by the same individual who signs the Statement of Bid and Signature Page, which will include:

- (i) a statement of the length of time the Bidder has been regularly engaged in the business of providing production services;
- (v) the approximate number of jobs it has successfully provided to clients within the last twelve months as of the bid due date;

B. References: Bidding organizations must list, on the above-referenced letter, at least three

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(3) references of customers or accounts, which are the same size as the Board or larger, to whom or to which they have provided said services currently or in the past twenty-four months. The letter must state the name, title, and telephone number of a responsible party at each reference account given.

- C. Resumes:** Resumes of key individuals, minimum of producer, director, writer (we acknowledge same person may fill more than one role).

6. NOTICE TO BIDDERS

ELECTRONIC FUNDS TRANSFER

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

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

7. RESPONSIBILITY OF BIDDING ORGANIZATION

An organization which is the low responsive Bidder on a City of New York contract must also be determined responsible, according to the definition contained in the Procurement Policy Board Rules, before being awarded a contract. This determination may be based on, among other things, verification of the information provided on VENDEX Questionnaires, contact with the references provided, one or more interviews of the principals of the apparent low Bidder organization, a review of information contained in the City's VENDEX (vendor information) database, and at the Board's option, one or more site surveys of the apparent low Bidder's place of business.

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The submission of a timely, full, complete and responsive bid is a necessary condition for being placed under consideration for the award of a contract. The submission of the apparent low and responsive bid will result in the Board's further consideration of that Bidder for contract award. No contract award shall be made until and unless the Board determines that the apparent low and responsive Bidder has the requisite resources and capabilities to perform the services and the requisite business integrity to receive public funds.

The determination of the apparent low Bidder shall be based solely on the total bid price as stated on Line 11 of the applicable Bid Summary Page. The bid prices are a function of the estimated quantities and the Bidder's Unit Prices. The Estimated Quantities stated on the Bid Pages are for the sole purpose of enabling a uniform comparison of all bids received at the place and by the deadline designated in this IFB. Actual services to be provided under this contract shall be on an as needed basis. The Board makes no representations as to the actual quantity of services to be provided.

8. BUSINESS RECORDS

The Contractor shall keep complete and up-to-date records concerning the operation of this contract. The contractor shall comply with all record-keeping procedures established and required by the Industry as well as keeping records of salaries and benefits in accordance with recognized commercial accounting practices. Records must be available for inspection or audit at any reasonable time as requested by the Board of Elections.

9. LIQUIDATED DAMAGES

The Contractor shall be paid only for services rendered in a satisfactory manner as set forth in the contract. Should the Contractor fail to satisfactorily provide services according to the terms and conditions of this agreement, the Board may at its option, have the services performed by another provider and deduct from any monies due or to become due to the Contractor an amount equal to the difference between the cost of the service provided by the other provider and the cost of the service under the Contract.

In the event that said agreement is terminated To enable the Board to provide services required under this agreement, the Board shall notify the contractor in writing, that said agreement is terminated and in order to enable the Board to provide emergency services the contractor shall be liable to pay liquidated damages to the Board in the amount of \$10,000. Such liquidated damages may be deducted from any amounts owed to the Contractor in the event said agreement is terminated.

10. INSURANCE

All coverage is to be primary protection, and the City insurance program, if applicable, will not be called upon to contribute to a loss. Coverage written on an "occurrence" basis is preferred. The Board reserves the right to obtain complete, certified copies of all required insurance policies at any time. Where the term "Insured" is used it refers to the Contractor awarded this contract.

All insurance coverage must be maintained during the life of this contract and shall protect the City of New York, the Board, their officers, agents and employees, the Contractor and his/her employees

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and/or subcontractors performing work under this contract from claims for property damage and/or bodily injury which may arise from operations under this contract, whether such operations by him/herself or anyone directly or indirectly employed by him/her.

The policy shall contain no exclusions or endorsements which are not acceptable to the City and shall be of a form and by an insurance company acceptable to the City.

A. Workers Compensation Insurance

Before performing any work under the Contract, the Contractor shall procure Workers Compensation Insurance in accordance with the laws of the State of New York, on behalf of all employees who are to provide a service under this Contract. Two certificates of insurance of authority for self-insurance shall be furnished to the Board upon request.

B. Employer's Liability Insurance

Before performing any work under the Contract, the Contractor shall procure Employer's Liability Insurance affording compensation because of bodily injury by accident or disease sustained by any employee of the Insured arising out of and in the course of his/her employment by the Insured. Two certificates of insurance or authority for self-insurance shall be furnished to the Board upon request.

Certificates confirming renewals of insurance shall be presented not less than 30 days prior to the expiration date of coverage until all operations under this contract are deemed complete.

C. Commercial General Liability

Before commencing work, the Contractor shall procure a commercial general liability policy in the Contractor's name and naming the City of New York and the Board as additional insured and endorsed to cover liability assumed by the Contractor under the indemnity provisions of this Agreement.

1. THE FOLLOWING ENDORSEMENTS ARE REQUIRED TO BE MADE ON THE POLICY & ON THE REQUIRED CERTIFICATES OF INSURANCE.

- i. Notice under the Policy of the Insured: shall be addressed to New York City and, The Board of Elections, 32 Broadway, 7th Floor, New York, New York 10004.
- ii. Notice of Accident or Claim: Notice of Accident shall be given to the Company by the Insured within one hundred twenty (120) days after notice has been given to the Board's Procurement Department, of such accident, or notice of claim shall be given to the Company within one hundred twenty (120) days after such notice of claim shall have been filed with the Comptroller's Office of the City of New York. Notice to the Company by either party shall be deemed sufficient notice under the Policy.
- iii. Notice of Cancellation of Policy: The policy shall not be canceled, terminated, modified or changed by the Company, other than for non-payment, unless thirty (30) days prior written notice is sent to the Insured by registered mail and also

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sent to the Board (Procurement Department) nor shall the policy be canceled, terminated, modified or changed by the insured without prior consent of the Board of Elections.

D. MOTOR VEHICLE INSURANCE – NOT REQUIRED

Each vehicle used in the performance of any contract that may result from this Invitation for Bids shall be covered by Automobile Liability Insurance covering that vehicle (ISO Form number CA 001 {ed. 1/80} for Automobile Liability, code 1, "any auto") in the amount of not less than \$200,000 per person, payable for those expenses specified in paragraphs 1,2 and 3 of subdivision a of section 5102 of the New York State Insurance law, and coverage in an amount of not less than \$100,000 minimum liability, and of not less than \$300,000 maximum liability for bodily injury and death, as said terms are described and defined in section 370(1) of the Vehicle and Traffic Law. A written request from the Board for proof of such Motor Vehicle Insurance for any vehicle used in the performance of any contract that may result from this Invitation for Bids shall be complied with and responded to within 48 hours of the receipt of any such written request. Failure to provide such proof within 48 hours of such a request will be grounds for terminating the contract.

11. CONTRACTOR TO PROVIDE REPORTS

The Contractor shall provide reports, data and other information which shall, from time to time, be required by the Board for monitoring and evaluation purposes.

PART III. INSTRUCTIONS FOR COMPLETING BID PAGES

There are three tables for which your input is required: Table 1. Estimated Number of Days and Table 2 and 3. Bid Price Tables – Production Cost per Category. For tables 2 & 3 you will need to multiply the estimated quantity and the unit price columns to get the cost

Table 1. Estimated Number of Days is for informational purposes only, and will not be used to determine the low bidder.

Table 1. Estimated Number of Days

NO.	A	B
	Items	Estimated Number of Days
1	# of pre-production days	
2	# of shooting days	
3	# of post-production days	
4	# of days to develop script	

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Bid Price Table –

Table 2. Production Cost per Category

NO	A Items	B Estimated Quantity	C Unit Price	D Cost
1	Pre-production costs	1		\$
2	Location costs	1		\$
3	Props costs	1		\$
4	Equipment costs	1		\$
5	Talent costs	1		\$
6	Work crew costs	1		\$
7	Post-production costs	1		\$
8	DVD duplication costs	50,000	/per dvd	\$
9	DVD delivery costs to all 5 boroughs	50,000	/per dvd	\$
10	Total Video Cost (sum of lines 1-9)	N/A	N/A	\$

Table 3. Re-Shoot Production Cost per Category

NO	A Items	B Estimated Quantity	C Unit Price	D Cost
11	Pre-production costs	1		\$
12	Location costs	1		\$
13	Props costs	1		\$
14	Equipment costs	1		\$
15	Talent costs	1		\$
16	Work crew costs	1		\$
17	Post-production costs	1		\$
18	DVD duplication costs	50,000	/per dvd	\$
19	DVD delivery costs to all 5 boroughs	50,000	/per dvd	\$
20	Total Re-Shoot Video Cost (sum of lines 11-20)	N/A	N/A	\$

TOTAL BID PRICE (TOTAL OF LINES 10 AND 20) _____

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SEPTEMBER 1, 2009 THROUGH SEPTEMBER 30, 2010

STATEMENT OF BID AND SIGNATURE

TOTAL DOLLAR AMOUNT OF BID : \$ _____

For term of contract, September 1, 2009 through September 30 2010

TOTAL DOLLAR AMOUNT OF BID IN WORDS:

The under signed hereby certifies to the truth and accuracy of all figures contained in this Bid.

BIDDER:

(NAME OF COMPANY)

(ADDRESS)

BY:

Signature of (person authorized to sign)

Please Print Name and Title

Telephone Number

NOTE: In case of discrepancy between the amount in figures and the amount in words, the lesser amount will apply. All additions and extensions are subject to audit. The appropriate affidavit on Pages 55 through Pages 57 should be subscribed and sworn to before a Notary Public or Commissioner of Deeds.

TAX IDENTIFICATION NUMBER	
----------------------------------	--

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3. BID AFFIRMATION

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PIN # 003200933109

Bidder Name: _____

Title: _____

Bidder Organization: _____

The above-named bidder affirms and declares:

1. The said bidder is of lawful age and the only one interested in this bid; and that no person, firm or corporation other than herein above-named has any interest in the bid, or in the contract proposed to be taken.
2. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization under penalty of perjury that to the best of knowledge and belief:
 - a) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as with any competitor or potential competitor;
 - b) Unless otherwise required by law, the prices, which have been quoted in this bid, have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other bidder or to any competitor or potential competitor.
 - c) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or **not** to submit a bid for the purpose of restricting competition.
3. That no member of the City Council or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.
4. Said bidder is not in arrears to the City of New York upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon 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 bidder to receive public contracts except _____.
5. The bidder shall file with the bid an affirmation that it has paid all applicable City income, excise and other taxes for all years it has conducted business activities in New York City, and indicate on its bid its Tax Identification Number.

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6. 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 should this bid be accepted by the City and the contract awarded him, he and his subcontractors engaged in the performance thereof:
 - a) 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-a of the New York Labor Law as more expressly and in detail set forth in the contract form; and
 - b) will comply with the provisions of Section 6-109 of the Administrative Code of the City of New York in relation to minimum wages and other stipulations as more expressly and in detail set forth in the Agreement; and
 - c) have complied with the provisions of the aforesaid laws since their respective effective dates; and
 - d) will post notices to be furnished by the Department setting forth the requirements of the aforesaid laws in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of the Contract can readily view it, and will continue to keep such notices posted until the supplies, materials and equipment, or work, labor and services required to be furnished or rendered by the Contractor have been finally accepted by the Department. In the event of breach or violation of any of the foregoing, the bidder may be subject to damages, liquidated or otherwise, cancellation of the Contract and suspension as a bidder for a period of three years. (The words "the bidder", "he", "his", and "him" where used herein shall mean the individual bidder, firm, partnership, or corporation executing this bid).
 7. Compliance Reports: 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:
 - a) represents that his attention has been specifically drawn to Executive Order No. 50, dated April 25, 1980, on Equal Employment Compliance of the Contract Agreement; and
 - b) warrants that he will comply with the provisions of Executive Order No. 50 as set forth herein. The apparent low bidder must, if required, submit the Employment Report pursuant to Executive Order No. 50 within five (5) days after the bid opening.
 8. 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 that he will comply with the provision of the contract agreement on providing records as set forth herein.
 9. That said bidder has carefully 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 the work, materials, supplies, tools and appliances for all labor and materials necessary or required hereunder, all in strict conformity with the contract, in accordance with the schedule of prices annexed hereto.
 10. The names and address of all persons interested in this bid are as follows:
-

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11. The bid is made without any connection with any other person making a bid for the same purpose and it is in all respects fair and without collusion and fraud.

12. My name, residence and place of business are as follows:

_____.

Signature

Title

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SEPTEMBER 1, 2009 THROUGH SEPTEMBER 30, 2010

PART IV. AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20 ____ by and between the City of New York acting through the Board of Elections in the City of New York located at 32 Broadway, New York, New York 10004 and

("Contractor")

located at _____

ARTICLE 1. DEFINITIONS

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

- a. "City" shall mean the City of New York, and its agencies as defined in Section 1150 of the City Charter.
- b. "Comptroller" shall mean the Comptroller of the City of New York.
- c. "Department" shall mean the Board of Elections in the City of New York, the Board of Elections, or both.
- d. "Commissioner or "Administrator" shall mean the Executive Director of the Board of Elections.
- e. "Law" or "Laws" shall include but not be limited to the New York City Charter, the New York City Administrative Code, any local law of the of the City of New York, any State or Federal Law, and any ordinance, rule or regulation having the force of law.
- f. The Contractor shall also be referred to as "it", whether such Contractor be an individual, partnership or corporation.
- g. "Contract," except for titles, sub-titles, headings, running deadlines, tables of contents and indices (all of which are printed herein merely for convenience) shall include the following (except for such portions thereof as may be specifically excluded):
 1. The Advertisement and Proposal for Bids.
 2. The Bid
 3. The Agreements
 4. The Specifications;
 5. The Contract Drawings;
 6. All provisions required by law to be inserted in this contract whether actually inserted or not;
 7. The notice of award.

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8. Instructions to bidders; Invitation for Bids; information for bidders; terms denoted as "Agreement".

ARTICLE 2. SCOPE OF SERVICES

The contractor agrees to perform all the services described in the specifications attached hereto as Part II of the proposal for bid.

ARTICLE 3. PERIOD OF PERFORMANCE

The period of performance of this contract shall be from September 1, 2009 through September 30, 2010. This Agreement is subject to a two (2) year renewal under the same terms and conditions herein.

ARTICLE 4. CONSIDERATION

The City agrees to pay the Contractor agrees to accept, as full consideration for the complete and satisfactory performance of the services required herein, an amount not to exceed _____, such amount being based upon the Contractor's Bid for the work or services required as set forth in Part III (BID) of the Proposal for Bid, and in the case where such bid is a unit price, upon the quantity, volume, amount or period of work or services or materials estimated by the Department to be required multiplied by such unit Bid Price. Any such estimated quantity, volume, amount or period of work or services or materials is an estimate based upon experience. The Department shall neither be required to order any quantity, amount, or period thereof, nor shall it be limited by any such estimate, but the quantity, amount, or period ordered and paid for shall be that which actually required by the Department and provided by the Contractor.

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

ARTICLE 5. LIABILITY OF CONTRACTOR

GENERAL LIABILITY

- A. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person and for all damage to any property sustained during its operations and work under this Agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or, damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the Contractor or not.

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

5.2 PROTECTION OF CITY PROPERTY

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

5.3 INFRINGEMENTS

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

ARTICLE 6. BONDS, INSURANCE AND LIQUIDATED DAMAGES

- 6.1 The Contractor shall, prior to or at the time of execution of this contract, deliver to the City a performance bond and a payment bond if such bonds are required, having an surety there under such surety company there under such surety company or companies as are approved by the Comptroller. Such bonds shall be in the amount and in the form prescribed in the Schedule of Bonds and Liability Insurance attached hereto (see Page 70).

6.2. INSURANCE

- A. The Contractor shall procure and maintain during the entire performance period of this contract the insurance coverage prescribed hereinafter in this Article 6.

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- B. Upon written demand, the Contractor shall furnish to the Agency a schedule of current insurance covering this contract, showing coverage amount, expiration date, carrier and policy number, which said schedule shall be maintained and updated, when applicable.
- C. The Contractor shall also require any subcontractor hereunder to procure and maintain the insurance required herein during the entire period of its performance. A schedule of current insurance showing the above information shall be furnished to the Agency, at least 5 days prior to entry of such subcontractor's personnel performing work on City-Owned or City Leased facilities.

6.3 **WORKER'S COMPENSATION AND DISABILITY BENEFITS**

If this Agreement be of such character that the employees engaged thereon are required to be insured by the provisions of Chapter 615 of the Laws of 1922, known as the "Workers Compensation Law" and acts amendatory thereto, the Agreement shall be void and of no effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Agreement such employees in compliance with the provisions of said law, inclusive of Disability Benefits; and, shall furnish the Department with two (2) certificates of these insurance coverage.

6.4 **UNEMPLOYMENT INSURANCE**

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

6.5 **PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

- A. Before commencing any performance under this contract, the Contractor shall submit to the Administrator of his/her duly authorized representative two (2) executed copies of the insurance policy or policies, duly issued by the insurance carrier(s) to the Contractor and providing coverage for the Contractor and for its subcontractors for work being performed under the contract for at least the limits of liability prescribed in the Schedule of Bonds and Liability Insurance attached hereto (see Page 70).
- B. This insurance shall be maintained by the Contractor until ALL WORK under the contract is completed and accepted by the City, and shall include the City as a named insured.
- C. THE LIMIT OF LIABILITY FOR PUBLIC LIABILITY (BODILY INJURY) for EACH OCCURRENCE is the limit of liability required for all damages, including damages for care and loss of services, arising out of bodily injury, sickness, or disease, including death, at any time resulting therefrom, sustained by one or more persons in any one accident or occurrence.
- D. THE LIMIT OF LIABILITY FOR PROPERTY DAMAGE for EACH ACCIDENT is the limit of liability required for all damages arising out of injury to or destruction of property, including the loss of use thereof, caused by any one accident; the AGGREGATE is the total liability required for all damages arising out of injury to or destruction of property including loss thereof, caused by all accidents arising out of operations performed under the contract during the policy period.

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- E. If the aggregate limit of liability specified under the contractor's policy is not sufficient to cover all claim for damages arising from its operations under this contract and for any other work performed by it or if the policy of insurance does not provide that the aggregate limit liability for property damages applies to each contract shall have such policy amended so that the aggregate limit of liability required under the contract will be available to the City to cover all claims for damages due to operations under the contract.

6.6. **OWNER'S PROTECTIVE PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

If the work required under this contract is to be performed on City premises (or on premises of which the City is a lessee), the Contractor shall also furnish an Owner's Protective Public Liability and Property Damage Insurance Policy or Policies to Protect the City against claims for damages for Bodily injury and Property Damage arising from the operations of the Contractor and its subcontractors for the same limits of liability specified. Such insurance policies shall insure THE CITY OF NEW YORK (and any lessee, or lesser of the premises, as their respective interests shall appear) and the Contractor shall furnish to the Administrator or his/her duly authorized representative two (2) executed copies of such policy or policies, which shall contain the following provisions:

- a) **NOTICE OF ACCIDENT OR CLAIM** - Notice of accident shall be given to the Company within One Hundred Twenty (120) days after notice to the Administrator of his/her duly authorized representative of such accident, or notice of claim shall be given to the Company within One Hundred Twenty (120) days after such claim shall have been filed with the Comptroller of the City of New York. Notice to the Company within One Hundred Twenty (120) days after such claim shall have been filed with the Comptroller of the City of New York. Notice to the Company be either party shall be deemed sufficient notice under the policy.
- b) **NOTICE OF CANCELLATION OF POLICY** - The policy shall not be canceled, terminated, modified.
- c) **THE PRESENCE OF INSPECTORS OR OTHER EMPLOYEES OF THE** insured on the site of the work performed under the contract with the Insured shall not invalidate the policy of insurance.
- d) **VIOLATION OF ANY OF THE TERMS** of any policy issued by the Insurance Company to the Contractor shall not invalidate this policy.

6.7. **MOTOR VEHICLE LIABILITY INSURANCE**

If performance of this contract involves use by the Contractor of a Motor Vehicle Liability Insurance, with the City as an additional named insured party, in accordance with the limits prescribed in the Schedule of Bonds and Liability Insurance. During the performance and until the date of termination hereof, the Contractor shall maintain such required Motor

Vehicle Liability Insurance with a carrier or carriers satisfactory, to the Department and Office of the Comptroller, and shall furnish the Administrator of his/her duly authorized representative two (2) executed copies of such insurance policy or policies. Such Motor Vehicle Liability Insurance shall cover all vehicles to be used in such performance.

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6.8 **LIQUIDATED DAMAGES**

If provided for in the Specifications, liquidated damages for failure to perform the work in compliance with the terms of this Agreement shall be assessed by the Department against the Contractor in accordance with said provisions.

ARTICLE 7. PROVISIONS RELATING TO LABOR

7.1 **SUPERVISION BY CONTRACTOR**

- A. The Contractor shall give its personal supervision to the work or have competent manager, foreman or supervisor, satisfactory to the Administrator, assigned to the work at all times during performance of the contract, with authority to act for the Contractor.
- B. In the performance of the contract hereunder, the Contractor shall utilize competent and qualified persons. All such persons are the employees of the Contractor and not of the City and Contractor shall be responsible for their acts, personal conduct and work.
- C. All services shall be performed in a skillful and workman like manner. The Administrator may require and the Contractor agrees to the removal from the work of any of the Contractor's personnel or if its subcontractor's personnel deemed incompetent, careless or otherwise objectionable by the Administrator.
- D. The Department shall have the right to have representatives of the Department or of the City or the State or Federal governments present at the site of the engagement to observe the work being performed.

7.2 **PROHIBITED ACTS**

The Contractor shall not employ any labor, or utilize materials or means which employment or utilization during the course of this agreement may to in any way tend cause or result in strikes, work stoppages, delays, suspension of work or similar troubles by workmen employed by the Contractor, or by any of the trades working in or about the buildings and premises where work is being performed under this agreement, or by contractors or their subcontractors pursuant to other agreements or contracts by the City of New York, its agencies, departments boards or authorities. Any violation by the contractor of these requirements shall be considered as proper and sufficient cause for declaring the contractor to be in default.

7.3 **NOTICE OF LABOR DISPUTES**

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice to the Department, including all relevant information with respect thereto.

7.4 **MINIMUM WAGE AND WORKING CONDITION**

- A. Except for those employees whose minimum wage is required to be fixed pursuant to Section 220-d of the Labor Laws of the State of New York, all persons employed by the Contractor and any subcontractor in the manufacture of furnishing of work, labor or

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services, used in the performance of this contract will be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the federal minimum wage.

- B. No part of the work, labor or services will be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or working under conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this contract. Compliance with the safety, sanitary and factory inspection laws of the state in which the work is to be performed shall be prima facie evidence of compliance with this paragraph.

- C. For any breach or violation of any of the provisions of paragraphs A. and B. above, the Contractor shall be liable to the City for liquidated damages, which may be withheld from any amounts due herein or may be recovered in suites brought by the Corporation Counsel in name of the City, in addition to damages for any other breach of this contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this contract. In addition, the Administrator shall have the right to cancel this contract for violation of this clause and enter into other contracts for the completion of this contract, charging any additional cost to the Contractor. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages in violation of the provisions of this clause, shall be held in a special deposit account and shall be paid without interest, on order of the City Commissioner of Labor, directly to the employees who have been paid less than minimum rates pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

7.5 **HOURS AND WAGES**

Pursuant to the provisions of Section 220 of the New York State Labor Law:

- A. No laborer, workman or mechanic in the employ of the Contractor subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency, and unless specific dispensation shall have been granted by the industrial commissioner. Whenever such a dispensation is granted all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workmen and mechanics performing such work shall be paid a premium wage commensurate with the premium wage commensurate with the premium wages prevailing in the area in which the work is performed.

- B. The wages to be paid and the supplements to be provided - for a legal day's work, to laborers, workmen or mechanics employed by the Contractor shall not be less than the prevailing wages and supplement required to be paid to such employees, as ascertained and prescribed by the Comptroller.

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7.6 Sections 7.7 through 7.11 apply to contracts for building service work.

7.8. OVERTIME (Sec. 232 - Labor Law)

All building service employees, who work more than eight hours in any one day or more than forty hours in any work week, shall be paid wages for such overtime by the Contractor, at a rate not less than one-and-one half times his prevailing basic cash hourly rate.

7.9 RECORD KEEPING (Sec 233 Labor Law)

- A. The Contractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by it as true, under penalties of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which he/she was employed, and the wages paid.
- B. Where the wages paid include sums which are not paid directly to the employee weekly and which are expended for supplements, the records shall include the hourly payment on behalf of such employees, the supplement for which such payment has been made, and the name and address of the person to whom such payment has been made. In all cases, the Contractor shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments are made.
- C. The records required herein shall be kept on the site of the work during all of the time that work hereunder is being performed. Upon a formal order of the City, the Contractor shall produce within 5 days on the site of work, such records subscribed and affirmed by it as true under the penalties of perjury.

7.10 CERTIFICATE OF WAGE AMOUNTS (Sec. 237 - Labor Law)

As a prerequisite to any payment by the City, the Contractor and his sub- contractors shall file a statement in writing and in form satisfactory to the Comptroller, certifying to the amounts then due for daily or weekly wages are unpaid and the amount due to or on behalf of each respectively, which statement so to be filed shall be certified by the oath of the Contractor or subcontractor, as the case may be that he has read such statement subscribed by his and knows the contents thereof, and that the same is true of his own knowledge.

7.11 DISCRIMINATION IN NEW YORK STATE (Sec. 239 - Labor Law)

- A. In the hiring of employees for the performance of work under this contract or any subcontract hereunder, the Contractor, subcontractor, or any person acting in behalf of the Contractor or subcontractor, shall not, by any reason of race, creed, color, sex or national origin, discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
- B. The Contractor, subcontractor or any person on his behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin.

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- C. The City may deduct from any amount due and payable to the Contractor under this contract a penalty and five dollars (5.00) for each person for each day during which such person was discriminated against or intimidated in violation of this section.
- D. The City may terminate this contract, and all monies due or to become due hereunder may forfeited, for a second or subsequent violation of this section.

ARTICLE 8. BOOKS AND RECORDS

8.1 MAINTENANCE

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

8.2 RETENTION OF RECORDS

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

8.3 NO REMOVAL OF RECORDS FROM PREMISES

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

8.4 AUDIT BY THE DEPARTMENT AND CITY

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

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

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

9.1 PROCUREMENT OF AGREEMENT

- A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.
- B. For a breach or violation of such representations or warranties, the Administrator shall have the right to annul this Agreement without Liability, entitling the City to recover all monies and hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded. The City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to make any other action provided for by law or pursuant to his Agreement.

9.2 CONFLICT OF INTEREST

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

9.3 FAIR PRACTICES

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

- A. The prices in this Agreement have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor; and

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- C. No attempt has been made or will be made by the contractor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition. The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of the above.

ARTICLE 10. COVENANTS OF THE CONTRACTOR

10.1 EMPLOYEES

All experts or consultants or employees of the Contractor who are employed by the Contractor to perform work under this Agreement are neither employees of the City nor under contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engage under this Agreement. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association corporation or organization engaged by the contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, worker's compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

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

10.3 CONFIDENTIALITY

- A. All information obtained, learned, developed or filed by The Contractor in connection with public assistance recipients or their relatives or in connection with other recipients or services, including data contained in official department files or records, shall be held confidential by the Contractor pursuant to the provisions of the Social Services Law of the State of New York, the Federal Social Security Act, and any applicable regulations promulgated there under and shall not be disclosed by the Contractor to any person, organization, agency or other entity except as authorized or required by law.
- B. All of the reports, information or data, furnished to or prepared, assembled or used by the Contractor under this Agreement are to be held confidential, and prior to publication the Contractor agrees that the same shall not be made available to any individual or organization without the prior written approval of the Department.

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- C. The provisions of this Section shall remain in full force and effect following termination of, or cessation of the service required by, this Agreement.

10.4 **COMPLIANCE WITH LAW**

Contractor shall render all services under this Agreement in accordance with the applicable provision of Federal, State and Local Laws, rules and regulations as are in effect at the time such services are rendered.

10.5 **FEDERAL EMPLOYMENT PRACTICES**

Contractor and its subcontractors shall comply with the Civil Rights Act of 1964 and any amendment thereto, and the rules and regulations thereunder.

10.6 **ASSIGNMENT**

- A. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or of the Contractor's right, title, interest, obligations or duties herein, or the Contractor's power to execute such Agreement, or assign, by power of attorney or otherwise, any of its rights to receive monies due or to become due under this Agreement, unless the prior written consent of the Department shall be obtained. Any such assignment, transfer, conveyance, sublease or other disposition without such consent shall be void.
- B. In the event that the Contractor assigns, transfers, conveys, sublets or otherwise disposes of this Agreement as specified in subdivision A. above, without the prior written consent of the Department, shall revoke and annul this Agreement and the Department shall be relieved and discharged from any and all liability and obligations growing out such Agreement to the Contractor, its assignees, transferees or subleases, shall forfeit and lose all monies theretofore earned under 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 of New York.
- C. This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

10.8 **SUBCONTRACTOR**

- A. The Contractor agrees not to enter into any sub-contracts for the performance of the obligations, in whole or in part, under this Agreement without the prior written approval of the Department. Two copies of each such proposed sub-contract shall be submitted to the Department with the Contractor's written request for approval.
- B. All such subcontracts shall contain provisions specifying:
1. that the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Department and the Contractor.
 2. that nothing contained in such contract shall impair the rights of the Department.

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3. that nothing contained therein, or under the Agreement between the Department and the Contractor, shall create any contractual relationship between the subcontractor and the Department, and
 4. that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Department and the Contractor.
- C. The Contractor agrees that it is fully responsible to the Department for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.
- D. The aforesaid approval is required in all cases other than individual employer-employee contracts.
- E. The Contractor shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

10.9 **PUBLICITY**

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

10.10 **PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, of the regulations of the United States Department of Commerce promulgated there under.
- 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 1969, as amended, or the regulations promulgated there under, the Comptroller may, at his option, render forfeit and void this contract.
- C. The Contractor shall comply in all respects, with the provisions of Section 343-10.0 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

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10.11 **INVENTIONS, PATENTS AND COPYRIGHTS**

- A. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, it shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention or discovery, including rights under any patent issued thereon, shall be disposed of an administered in order to protect the public interest.
- B. No report, document or other data produced in whole or in part with contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the Agreement.
- C. If any copyrightable material is developed under, or in the course of performing this Agreement, any Federal Agency providing federal financial participation for the Agreement shall have a royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, the work for governmental purpose.
- D. In no event shall Subsections A, B and C of this Section be deemed to apply to any report, document or other data, or any invention of the Contractor which existed prior to or was developed or discovered independently from, its activities related to or funded by this Agreement.

10.12 **ANTI-TRUST**

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

ARTICLE 11. EQUAL EMPLOYMENT

11.1 **EXECUTIVE ORDER NO. 50**

The Contractor shall comply with the provisions relating to Equal Employment Opportunity as set forth in the Supply and Service Contract Rider, which is attached hereto and incorporated herein.

11.2 **Where required by New York State Labor Law Section 220-3 the Contractor agrees:**

- (A.) That 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 sub-contractor shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- (B.) That neither the Contractor, subcontractor, nor any person on its 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, sex or national origin.

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

11.3 **As required by New York City Administrative Code Section 343-8.0:**

- 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 or refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
- B. It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision (A) above, to ask, indicate or transmit orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
- C. Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this 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 or by imprisonment for not more than thirty days, or both.

11.4 **NON-DISCRIMINATION AGAINST THE HANDICAPPED**

The Contractor agrees that it will comply with the provisions Section 504 of the Rehabilitation Act of 1973, as amended, and all regulations, guidelines and interpretations issued pursuant thereto.

ARTICLE 12. TERMINATION

- 12.1 A. At any time during the period of this Agreement the Department upon ten days' written notice to the Contractor may cancel the Agreement and terminate the service. In such event the Contractor shall be paid whatever sum has become due to him for services performed prior to the effective date of the cancellation without further liability to the City.

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- B. The Contractor shall be entitled to apply to the Department to have this Agreement terminated by said Department by reason of any failure in the performance of this Agreement (including any failure by the Contractor to make progress in the prosecution of work hereunder which endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; flood; epidemics; quarantine restrictions; strikes; freight embargoes, or any other cause beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Department which agrees to exercise reasonable judgment therein. If such a determination is made and the Agreement terminated by the Department pursuant to such application by the Contractor, such termination shall be deemed to be without cause.

 - C. All payments pursuant to this section 12.1 shall be accepted by the Contractor in full satisfaction of all claims against the City arising out of termination.
- 12.2 The Contractor may be declared in default by this Administration and the Department may terminate the Agreement in whole or in part by written notice to the Contractor if:
- A. The Contractor becomes insolvent; or
 - B. The Contractor makes an assignment for the benefit of creditors pursuant to the Statutes of the State of New York; or
 - C. A voluntary or involuntary petition in bankruptcy be filed by or against the Contractor; or
 - D. A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or
 - E. The Contractor sublets, assigns, transfers, conveys or otherwise disposes of this Agreement other than as herein specified; or
 - F. The Contractor fails or refuses to proceed with the work when and as directed by the Administrator; or
 - G. The Contractor is or has been unnecessarily or unreasonably or willfully delaying (i) the performance and completion of the work, or (ii) the award or necessary subcontracts, or (iii) the placement of necessary material and equipment order; or
 - H. The Contractor, without just cause, reduces his working force to a number which, if maintained, would jeopardize the timely performance of the contract, and fails or refuses to increase such working force when ordered to do so by the Administrator; or
 - I. The work cannot be completed or is not completed within the time herein provided therefor or within the time to which such completion may have been extended; unless,, the delay is caused by circumstances under the Administrator's control; or
 - J. The Contractor abandons the work; or

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- K. The Contractor is or has been willfully or in bad faith violating any of the provisions of this contract.
- 12.3 Before the Commissioner shall exercise his right to declare the Contractor in default by reason of the conditions set forth in Section 12.2 A, F, G, H, I and K, he shall give the Contractor an opportunity to be heard, on 2 day's written notice, at which hearing the Contractor may have a stenographer present; provided, however, that a copy of such stenographic notes, if any, shall be furnished to the Administrator.
- 12.4 In the event the Administrator terminates this Agreement in whole or in part as provided in section 12.2 above, the City may procure, upon such terms and in such manner deemed appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or services; provided that, the Contractor shall continue the performance of this Agreement to the extent not terminated hereby.
- 12.5 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 Contractor's default, and the City may withhold payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due to the City from the Contractor is determined.
- 12.6 The provisions of the Agreement regarding confidentiality of information shall remain in full force and effect following any termination.
- 12.7 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 13. MISCELLANEOUS

13.1 CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

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

- A. If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as the Contractor may provide to the City in writing; and
- B. With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to

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Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

- C. With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
- D. If the Contract or commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City. If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

13.2 **GENERAL RELEASE**

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

13.3 **CLAIMS AND ACTIONS THEREON**

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

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

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

13.5 **WAIVER**

Waiver by the Department of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the Department or City as required and attached to the original agreement.

13.6 **NOTICE**

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

13.7 **ALL LEGAL PROVISIONS DEEMED INCLUDED**

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

13.8 **SEVERABILITY**

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

13.9 **AVAILABILITY OF FUNDS**

In the event that the period of performance contemplated by this Agreement involves performance by the Contractor in a subsequent City Fiscal Year(s) funding for such period is subject to the availability and appropriation of funds for such subsequent City Fiscal Year(s)

13.10 **PARAGRAPH HEADINGS**

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

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13.11 **INSPECTION AT SITE**

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

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ARTICLE 14. APPROVALS

14.1 THE CITY OF NEW YORK

This Agreement shall not become effective or binding unless:

- A. the Comptroller shall have endorsed his certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable hereto sufficient to pay the estimated expense of executing this Agreement; and
- B. approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975 in the event the Executive Order requires such approval; and
- C. certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan.

14.2 OTHER APPROVALS OR AUTHORIZATIONS

The requirement of this article 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.

ARTICLE 15. ENTIRE AGREEMENT

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

New Language - PPB Rules

ARTICLE 16

This contract is subject to the Rules of the Procurement Policy Board of the City of New York effective August 1, 1990. In the event of a conflict between said Rules and a provision of this contract, the Rules shall take precedence.

AGREEMENTS FOR GOODS AND SERVICES

PROMPT PAYMENT

The Prompt Payment provisions set forth in Chapter 4, Section 4-06 of Procurement Policy Board Rules in effect at the time of this solicitation will be applicable.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

BOARD OF ELECTIONS
CITY OF NEW YORK

By _____
MARCUS CEDERQVIST
Executive Director
Board of Elections

Contractor

(Affix Corporate Seal Here)

By _____

Title _____
(President or Vice President
if a Corporation)

Attest: _____
(Secretary or Assistant Secretary)

Approved as to Form
Certified as to Legal Authority

Acting Corporation Counsel

Date

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SPECIAL INSTRUCTION TO BIDDERS

INVESTIGATION

- 1.1 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation 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.
- 1.2(a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refused to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;
- 1.2(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any political subdivision thereof or any local development corporation within the City, then;
- 1.3(a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- 1.3(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 1.5 below without the City incurring any penalty or damages for delay or otherwise.
- 1.4 The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

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- (a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract lease, permit or license with or from the City; and/or
 - (b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination; shall be paid by the City.
- 1.5 The commissioner or agency head shall consider an address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate;
- (a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
 - (b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of adverse impact a penalty will have on such person or entity.
 - (c) The nexus of the testimony sought to the subject entity and its contract, leases, permits or licenses with the City.
 - (d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 1.4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 1.3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose of which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.
- 1.6 (a) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

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- (b) The term "entity" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City otherwise transacts business with the City.
- (d) The term "member" as used herein shall be defined as any person or entity as a partner, director, officer, principal or employee.

- 1.7 In addition to and notwithstanding any other provision of this agreement the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City of other person, firm, corporation or entity for any purpose of which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

PARTICIPATION IN AN INTERNATIONAL BOYCOTT

- a. The contractor agrees that neither the contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or 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 substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated there under, the Comptroller may, at his option, render forfeit and void this contract.
- c. The contractor shall comply in all respects with the provisions of Section 343-0 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller there under.

FOR NON-CONSTRUCTION CONTRACTORS

As required by New York State Labor Law S220-

- (a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor shall by reason of race, creed, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- (b) That no contractor, subcontractor nor any person on his behalf shall, in any matter, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin.

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- (c) That there may be deducted from the amount payable to the contractor by the City under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this contract and
 - (d) That this contract may be canceled or terminated by the City and all monies due or to become due hereunder may be forfeited, for second or any subsequent violation of the terms or conditions of this section of the contract.
 - (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits to the State of New York.
2. As required by New York City Administrative Code §343-5-8.0.
- (a) It shall be unlawful for any person engaged in the construction alternation, or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color, or creed of such person.
 - (b) It shall be unlawful for any person or any servant, agent, or employee of any person, described in subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, or creed or religious affiliation of any person employed or seeking employment for such person, firm or corporation.
 - (c) Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this contract.
 - (d) Any person, or the employee, manager, or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

PART V. RESOLUTION OF DISPUTES

1. Except as provided in 1 (a) and 1 (b) below, all disputes between the City and the vendor that arise under, or by virtue of this contract shall be finally resolved in accordance with the provisions of this Section and 4-09 of the Rules of the Procurement Policy Board ("PPB Rules"). The procedure shall be the exclusive means of resolving any such disputes.
 - (a) This section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.
 - (b) For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the supplier's work to the contract, and the acceptability and quality of the supplier's work; such disputes arise when the Engineer makes a determination with which the supplier disagrees.
2. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.
3. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the supplier shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer ("ACCO") or Engineer. Failure of the supplier to continue the work as directed shall constitute a waiver by the supplier of any and all claims being presented pursuant to this section and a material breach of contract.
4. Presentation of Dispute to Agency Head.
 - (a) Notice of Dispute and Agency Response. The supplier shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein or, if no time is specified, within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the supplier relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the supplier in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer 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

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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 supplier to produce any requested material whose relevancy the supplier has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the supplier of its claim.

- (b) Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the supplier and the ACCO and, in the case of construction or construction-related services, the Engineer 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 supplier with a contract related to the work of this contract, and that supplier shall be bound by the decision of the Agency Head. Any supplier thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the supplier initiating the dispute.
- (c) Agency Head Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the supplier and ACCO and, in the case of construction or construction-related services, the Engineer, together with a statement concerning how the decision may be appealed.
- (d) Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the supplier take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the supplier and more favorable to the City than the decision of the Agency Head.

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

- (a) Time, Form, and Content of Notice. Within thirty (30) days of its receipt of a decision by the Agency Head, the supplier 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 supplier 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 supplier to the Agency, including the Notice of Dispute. The supplier may not

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

- (b) Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the Comptroller any material not presented to the Agency Head except at the request of the Comptroller.
- (c) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the supplier. Willful failure of the supplier to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the supplier of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, agency representatives, and any other personnel desired by the Comptroller.
- (d) Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5 (c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the supplier and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The supplier may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties

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

- (a) the Chief Administrative law judge of the Office of Administrative trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issues such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions.
- (b) the City Chief Procurement Officer ("CCPO") or his /her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated, and
- (c) a person with appropriate expertise who is not an employee of the City. This

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person shall be selected by the presiding administrative law judge from a pre-qualified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

7. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the supplier, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

- (a) Form and Content of Petition by Supplier. The supplier 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 supplier 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 supplier 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 supplier to, the Comptroller's Office. The supplier 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 supplier shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.
- (b) Agency Response. Within thirty (30) days of its receipt of the Petition, by the Corporation Counsel the agency shall respond to the statement of the supplier 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 supplier. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.
- (c) Further Proceedings. The Board shall permit the supplier to present its case by the submission of memoranda, briefs, and oral argument. The Board shall also permit the Agency to present its case in response to the supplier by the 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 supplier nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB in its discretion, may combine more than one dispute between the parties for concurrent resolution.
- (d) CDRB Determination. Within forty-five (45) days of the conclusion of all

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submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have preferential effect with respect to matters not before the CDRB.

- (e) Notification of CDRB decision. The CDRB shall send a copy of its decision to the supplier, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer. A decision in favor of the supplier shall be subject to the prompt payment provisions of the PPB Rules. The Required payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.
 - (f) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four (4) months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with Section 5-11 of the PPB Rules.
8. Any termination, cancellation, or alleged breach of the Contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this section.

PART VI. CONTRACT CHANGES

Changes may be made to this contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Vendors deviating from the requirements of an original purchase order or contract without a duly approved change order, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original contract.

Contract changes will be made only for work necessary to complete the work included in the original scope of the contract, and for non-material changes to the scope of the contract.

Changes are not permitted for any material alteration in the scope of work. Contract changes may include any contract revision deemed necessary by the Contracting Officer.

The contractor may be entitled to a price adjustment for extra work performed or to be performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the contractor may be entitled to an extension of time for performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

(Non-Construction)

Except in the case of requirements contracts, any contract increases which cumulatively exceed the greater of 10% or 100,000 must be approved by the City Chief Procurement Officer.

PART VII. SCHEDULE OF BONDS AND LIABILITY INSURANCE

Each executed bond should be accompanied by (a) appropriate acknowledgments of the respective parties; (b) appropriate duly certified copy of Power of Attorney or other certificates of authority where bond is executed by agent, officer or other representative of Principal or Surety; (c) a duly certified extract from by-laws or resolutions of Surety under which Power of Attorney or other certificate of authority of its agency, officer or representative was issued, and (d) duly certified copy of latest published financial statement of assets and liabilities of Surety.

Bonding and Liability insurance requirements for Contract for PRODUCTION OF BOARD OF ELECTIONS POLL WORKER TRAINING VIDEO from September 1, 2009 through September 30, 2010.

To determine the amounts of the Bid Bond or Bid Deposit, you will need to calculate the Maximum Possible Award which would be the total of Item.

	<u>REQUIRED</u>	<u>COMMENTS</u>
1. (a) Bid Bond* or (b) Bid Deposit (certified check)	No	
2. Performance Bond* (or money or obligations of equal value)	No	
3. Payment Bond* (or money or obligations of equal value)	No	

*NOTE: Bonds shall be in the form prescribed on the following pages.
*NOTE: Insurance must be acceptable pursuant to requirements of NYS Dept. of Insurance

**SCHEDULE A
INSURANCE REQUIREMENTS**

Insurance as specified below is required for any contract awarded pursuant to this IFB. Certificates of Insurance and Endorsements must be sent to the Procurement Dept. NYC Board of Elections prior to the inception of services. All insurance is subject to approval by the City.

4. Workers Compensation, Statutory shall be provided as required by New York State Law.

5. Employer's Liability Insurance shall be in the minimum amount of \$100,000.

Commercial General Liability CG 00 01 (ed. 01/85) or equivalent; Combined Single limit-
Bodily Injury and Property Damage shall be in the minimum amount of \$1,000,000 per occurrence, \$2,000,000 aggregate/policy year.

Business Automobile Liability Insurance shall be in the amount of not less than \$100,000 per person \$300,000 per occurrence.

The following endorsement must be provided: The City of New York and the New York City Board of Elections named as additional insureds.

6. Liquidated Damages	Yes	See Part II - Specifications
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PART VIII. QUALIFICATIONS QUESTIONNAIRE

NOTE: If you need more space to answer a particular question, use reverse side or additional pages.

- 1. NAME OF BIDDER: _____
- 2. BUSINESS ADDRESS: _____
- 3. TELEPHONE NUMBER: _____
- 4. Bidder is a Corporation Partnership Individual
- 5. How many years has the bidder been in the Video Production/Duplication business?

- 6. Have you ever failed to complete any work awarded to you?
 YES NO
If so, where and why?

- 7. Have you or any entity of which you have been a partner or officer ever been declared in default by any city, state or federal agency? YES NO

(If answer is Yes give details)

- 8. Has any officer or partner of your entity ever been an officer or partner of some other entity, that failed to complete a service contract? YES NO
If so, state the name of the individual, other entity and reason therefore:

- 9. Set forth anything further which you feel is relevant in determining your responsibility.

- 15. What other Video Production/Duplication service projects has your company performed or currently have under contract with other governmental agencies (list on separate page if necessary)? (if none, so state)

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The answers to the foregoing Qualifications Questionnaire are true and correct.

Date: _____
Name of Organization

By _____
Title of Person Signing

STATE OF)
) ss:
COUNTY OF)

_____,
being duly sworn, deposes and says that he is of the above

(Name of Company)

and that the answers to the foregoing questions and all statements therein contained are true and correct.

(Signature)

Sworn to before on this day of _____, 20__

Notary Public

PART IX. EXTENSION OF TIME — NON-CONSTRUCTION

Upon written application by the contractor, the Agency Chief Contracting Officer may grant an extension of time for performance of the contract. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of alleged delay occurred, and the total number of delay in days attributable to such cause.

The ruling of the Agency Chief Contracting Officer shall be final and binding as to the allowance of an extension and the number of days allowed.

MACBRIDE PRINCIPLES PROVISIONS FOR NEW YORK CITY CONTRACTORS

ARTICLE 1. 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 Island to promote freedom of workplace opportunity.

Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business in Northern Ireland operations conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of 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 the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

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

PART A

In accordance with Section 6-115.1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

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PART B

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

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

1. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
2. take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
3. ban provocative religious or political emblems from the workplace;
4. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
5. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
6. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
7. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
8. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
9. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

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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 stipulations 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 terms of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

A G R E E D:

BY: _____

TITLE: _____

DATE: _____

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PART X. 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 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 Proposer or Bidder _____

Address _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER

A INDIVIDUAL — Social Security Number*: _____

B PARTNERSHIP, JOINT VENTURE or INCORPORATED 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 proposers 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 of businesses which seek City contracts.