

REQUEST FOR PROPOSALS

For

HR Advisory Services

RFP # 2025-001

Proposals must be submitted via email to BERSProcurement@bers.nyc.gov

Submissions sent to any other email will be disregarded.

Proposals are Due by No Later Than: 4:00 P.M. EST, Tuesday April 1, 2025

LATE PROPOSALS WILL NOT BE ACCEPTED

**This Request for Proposals solicitation is issued by the
New York City Board of Education Retirement System (“BERS”)**

55 Water Street 50th Floor, New York, NY 10041

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List of Appendices – Included as Separate Attachments

APPENDIX D	PROPOSAL FORM
APPENDIX E	PROGRAM PLAN

FOR PURPOSES OF THIS RFP, “WE,” “US,” OR “OUR” SHALL MEAN THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM (BERS), AND “VENDOR” OR “PROPOSER” OR “YOU” OR “YOUR” SHALL MEAN THE ENTITY SUBMITTING THE PROPOSAL TO BERS.

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DEFINITIONS OF KEY TERMS USED IN THIS RFP

Term	Definition
"Affiliate" (with or without capitalization)	With respect to a Party, any Person, directly or indirectly Controlling, Controlled by or under common Control with, such Party.
Agency	For the purposes of this RFP and for contract and insurance purposes, it refers to the New York City Board of Education Retirement System, also known as the Board of Education Retirement System of the City of New York ("BERS").
Actuary	The Chief Actuary of the City of New York. The Chief Actuary is the legally designated technical advisor to the Board of Trustees of the five New York City Retirement Systems, which includes the New York City Employees' Retirement System (NYCERS), the Teachers' Retirement System (TRS), the Board of Education Retirement System (BERS), the New York City Police Pension Fund (NYCPF), and the New York Fire Department Pension Fund (NYCFDPF).
BERS, NYCBERS, New York City Board of Education Retirement System, or Board of Education Retirement System of the City of New York	These terms are used interchangeably for the Board of Education Retirement System of the City of New York, its agents, employees, designees, etc. as the case may be.
Board of Trustees, Board, or Trustees	The Board of Trustees of the Board of Education Retirement System of the City of New York.
Bureau of Asset Management or "BAM"	The New York City Comptroller's Bureau of Asset Management, which oversees the investment portfolio for each of the five New York City retirement systems and related defined contribution funds. In this role, the Comptroller provides investment advice, implements Board decisions, and reports on investment performance. The Bureau of Asset Management advises the Boards on all investment-related topics, including investment policy and strategy, asset allocation, manager structure, manager selection and financial and economic developments that may affect the systems.
Comptroller	The Comptroller of the City of New York. The Comptroller is by law the custodian of City-held trust funds and the assets of the New York City Public Pension Funds and serves as Trustee on each of the funds. Further, the Comptroller is delegated to serve as investment advisor by all five pension Boards.
City, NYC	The City of New York.

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DEFINITIONS OF KEY TERMS USED IN THIS RFP (CONT'D.)

Term	Definition
"Control" (with or without capitalization and including the terms "controlling," "controlled by" and "under common control")	The possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person (such as, but not limited to, a Bidder, the Contractor, a Contractor's employee, an Affiliate and/or a Subcontractor), whether through the ownership of voting securities, by contract or credit agreement, as trustee or executor, and other forms of influence such as legal, political, financial, or otherwise.
HR	Human Resources. Also used to refer to BERS Human Resources Department.
MWBE	Minority- and Women-Owned Business Enterprises.
New York City Retirement Systems, the Systems	Collectively, each of the five New York City public pension funds: Teachers' Retirement System of the City of New York ("TRS"), New York City Employees' Retirement System ("NYCERS"), New York City Police Pension Fund ("NYCPPF"), New York City Fire Pension Fund (NYCFPF), and New York City Board of Education Retirement System ("BERS").
"Party" and "Parties" (with or without capitalization)	Each or both, respectively, of BERS and the Comptroller.
"Person" (with or without capitalization)	Any person, corporation, limited liability company, limited liability partnership, general partnership, limited partnership, trust, association, sole proprietorship, governmental organization or agency, political subdivision, body politic, or other legal person or entity of any kind.
Proposer, Contractor, or Vendor, you, your	The firm, corporation, or entity submitting a proposal to provide BERS with the goods and/or services specified herein and who, if awarded a contract, is obligated to provide such goods and/or services in accordance with all the terms and conditions of the contract.
RFP (Request for Proposals)	Used to define the method of solicitation used.
"Staff" (with or without capitalization)	Any and all of BERS' and/or vendor's, or its subcontractors' (if any), employees, officers, directors, members, partners, agents, or consultants.
"Subcontractor" (with or without capitalization)	Any Person other than the Contractor who provides, furnishes, supplies, delivers and/or otherwise gives services to BERS pursuant to an agreement with the Contractor. Any Contractor's Affiliate that provides Services to BERS pursuant to such an agreement shall be deemed a Subcontractor.

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SECTION. 1 PROGRAM SUMMARY, BACKGROUND, AND PURPOSE OF THE RFP

1.1 BERS OVERVIEW

The New York City Board of Education Retirement System (“BERS” or “the Agency”) is an approximately 160-person agency responsible for providing pension services to designated employees of the New York City Department of Education (“NYCDOE”) who are not eligible to participate in the New York City Teachers’ Retirement System. BERS is governed by a 28-member Board of Trustees. The structure, procedures, and benefits of the system are established by law, rules, and regulations. BERS is administered by an Executive Director appointed by the Board of Trustees. In addition, BERS is open to certain other covered employers, such as the New York City School Construction Authority, the New York City Police Department, and the New York City Transit Authority. BERS was chartered in 1921 and is one of five municipal pension systems within the City of New York.

BERS has approximately 50,000 active members and over 100,000 unique membership case files. BERS manages approximately US\$9 billion in member assets through various investment instruments under the supervision of the New York City Office of the Comptroller and the evaluation of the New York City Actuary. BERS offers both a defined benefit (traditional pension) plan called the Qualified Pension Plan (“QPP”) and a defined contribution plan known as the Tax Deferred Annuity (“TDA”). BERS is responsible for the management and administration of retirement funds and the disbursement of retirement, disability, and death benefits to its members and their designated beneficiaries.

1.2 NOTICE TO PROPOSERS

Communications Related to this RFP

Proposers are advised that from the date this RFP is issued (refer to **RFP Section 7.1 – RFP Timetable**) until the award of a contract, should a contract be awarded as a result of this RFP, **NO** communications or contact with Agency personnel related to this solicitation is permitted, except through the Agency’s designated contact email. Any inquiry regarding this solicitation must be made in writing, no telephone calls will be accepted regarding this RFP; please refer to **RFP Section 7.2 – Requests for Clarification and Addenda** for further details.

All written inquiries, comments, questions and/or correspondence related to this RFP must be submitted to the designated contact email at BERSProcurement@bers.nyc.gov. The email subject line must read: **RFP 2025-001 HR Advisory Services**.

Additional Information to Proposers

Except as noted, there shall be **NO** communication between any responding vendor or prospective responding vendor and:

1. Any member of BERS' Board of Trustees or their staff members;
2. Any employee of BERS (except as outlined herein); or
3. Any persons in a perceived position to influence decisions of BERS at any time during the process, and until the Agency makes its decision, except at times specified for oral presentations by selected firms, if any.

Direct communication with those persons referenced above, either in person, in writing, or by phone regarding the requirements and/or scope of this RFP, the RFP response, or the eventual awarding of the contract (should a contract ultimately be awarded), shall result in the disqualification of the respondent.

BERS reserves the right, without prejudice, to reject any or all RFP responses submitted. BERS will not reimburse Proposers for any expenses incurred in preparing their response to this RFP.

1.3 PROGRAM SUMMARY

BERS Learning and Organizational Development (“L&OD”) is seeking proposals from organizations experienced and capable in providing human resources advisory services (“HR Advisory Services”), with a focus on talent management, employee engagement, and organizational development. The awarded vendor will provide BERS access to industry research, benchmarking tools, and templates that enhance our internal strategy development and improve our ability to deploy and adapt effectively. The awarded vendor will provide research, analysis, and advisory support to BERS, enabling it to make informed decisions and effectively manage its workforce. The goal is to strengthen BERS’ ability to retain and develop talent, in alignment with BERS mission, vision, and goals – refer to the below links.

- BERS Mission and Vision: <https://www.bers.nyc.gov/site/bers/about/mission-statement.page>.
- BERS Goals: <https://www.bers.nyc.gov/site/bers/about/objectives.page>.

This Request for Proposal (“RFP”) may result in one (1) maximum, not-to-exceed contract agreement. The awarded contract will be for a term of one (1) year. BERS reserves the unilateral option to renew the contract for two (2) additional one-year periods. It is anticipated that services will commence on or about May 1, 2025.

1.4 BACKGROUND AND PURPOSE OF THE RFP

BERS is looking for a firm that can provide access to industry research, benchmarking tools, and templates to support us in building a strong HR foundation that enables us to retain and develop top talent. The selected firm would provide a library of resources that will assist our HR team to understand our current practices, identify areas for improvement, and guide us to develop high-quality, tailored, and sustainable solutions that align with our mission of providing retirement security to eligible staff within the New York City Department of Education and other New York City eligible employees.

SECTION. 2 MINIMUM QUALIFICATIONS

All proposals received on or before the proposal due date and time to the email address specified in this RFP will be evaluated to determine whether or not they meet the following **Minimum Qualifications**. BERS will only consider proposals where the Proposer (i.e., prime vendor) meets on their own all Minimum Qualifications, without the need to rely on any subcontractor(s) or other partners. The entity submitting the proposal must meet all Minimum Qualifications as stated herein. Proposals that fail to meet all Minimum Qualifications **will not** be considered.

- 2.1** Proposer may be a for-profit or not-for-profit institution. Individuals are not eligible to submit proposals for this RFP.

- 2.2** Proposer must provide evidence of being actively engaged in providing the services or for projects of a similar nature and scope as those described in this RFP.
- 2.3** Proposer must have a minimum of five (5) years of successful experience in providing the services or for projects of a similar nature and scope as those described in this RFP.
- 2.4** Proposer must provide three (3) letters of reference from clients, with their contact information (client's name, contract person, title, address, telephone number, and email), for projects or services of a similar nature and scope as those required in this RFP. Each reference must state the dates, locations, description of the services provided, and any outcomes or results.

IF THE SUBMITTED PROPOSAL DOES NOT CLEARLY EXHIBIT ALL OF THE ABOVE MINIMUM QUALIFICATIONS (APPENDIX D), THE PROPOSAL WILL NOT BE FURTHER EVALUATED.

IN APPENDIX D – PROPOSAL FORM, VENDORS MUST PROVIDE THEIR RESPONSE TO EACH MINIMUM QUALIFICATION NEXT TO ITS CORRESPONDING SUBSECTION NUMBER.

Further to 2.1, above: The Proposer, that is, the prime vendor responding to this RFP, must be a single firm proposing to provide the services described herein, either directly or through subcontractors under its direct supervision. Proposers (i.e., prime vendors) may not be a partnership of firms (e.g., joint venture). In the case of multiple firms proposing to work together, one must declare itself to be the prime vendor (i.e., Proposer) with all other involved firms being formal subcontractors to the prime vendor. BERS will hold the prime vendor solely responsible and liable for all its subcontractors. It is the prime vendor's responsibility to ensure its agreements with subcontractors are appropriate to this end and enable full compliance with all RFP Terms and Conditions and any subsequent agreements.

SECTION. 3 SCOPE OF SERVICES

The successful proposer will be required to perform **all** of the following services. Proposals for portions of any of the below services **will not** be accepted.

- 3.1** Provide access to industry research, benchmarking tools, and templates that enhance the Agency's internal strategy development and improve BERS' ability to make data-driven decisions quickly and efficiently.
- 3.2** Scope of tools and resources provided should include, but are not limited to, the following:
 - 3.2.1** Provide guided implementation to design and implement programs to enhance employee engagement and satisfaction, including feedback mechanisms and recognition programs.
 - 3.2.2** Provide a suite of survey tools that will help us gather data from our workforce such as new hire, engagement, exit insights, and retention surveys.
 - 3.2.3** Provide benchmarking tools that help us to optimize existing performance management processes that align with the BERS Employee Feedback Cycle and the agency goals and objectives.
 - 3.2.4** Provide guided implementation on training programs for staff and/or managers on topics such as diversity and inclusion, conflict resolution, performance management and other related management

development and leadership development topics, where appropriate. Provide tools that aid us in developing metrics and key performance indicators (“KPI”) to measure the effectiveness of HR initiatives and track progress HR goals.

- 3.2.5** Provide research on HR industry standards to inform and guide our strategic decision-making.
- 3.2.6** Provide support for organizational development initiatives, including change management, leadership development, and succession planning as follows:
 - 3.2.6.1** Provide Templates for organizational development activities such as change management frameworks, leadership training modules, or succession planning guides.
 - 3.2.6.2** Provide live one-on-one guidance sessions tailored to BERS-specific needs, such as developing action plans or implementing best practices.
 - 3.2.6.3** Provide customizable benchmarking tools aligned with BERS' objectives, enabling easy adaptation for ongoing assessments.
- 3.3** The selected firm must demonstrate expertise in HR Advisory Services and possess extensive experience in HR research, particularly within government organizations. The firm should have a thorough understanding of BERS' [mission, vision](#), and goals, as well as the unique challenges and opportunities facing the agency.
- 3.4** Proposers should have the ability to provide comprehensive research and analysis on HR-related issues providing actionable insights and recommendations to BERS. All research findings, recommendations, and advisory services provided to BERS must provide clear and concise documentation. All recommendations and solutions must meet industry standards.
- 3.5** Services may be delivered through a combination of options, including, but not limited to:
 - 3.5.1** Guided implementation Live or recorded webcasts
 - 3.5.2** Case studies and real-life scenarios
 - 3.5.3** Customizable templates and downloads
 - 3.5.4** On-Demand training classes

SECTION. 4 PROPOSAL REQUIREMENTS

Your proposal must fully address **all** of the Scope of Services listed in **Section 3**, above. Proposals will be evaluated on the basis of their content, not length. Using **Appendices D and E** (also see **Section 6** below), organize your proposal to address the following four (4) sections. Additionally, Proposers must submit a Pricing Proposal/Budget, per the requirements herein.

4.1 ORGANIZATIONAL CAPACITY (APPENDIX D)

In this section of the proposal response, the Proposer must show evidence of adequate human, organizational, technical, and professional resources and abilities to meet the needs of this RFP. Proposer must provide an overview of its organization and demonstrate, in the submitted proposal (**Appendix D**), the degree to which the organization is capable of successfully executing the required services. Proposer should include, but do not limit to the following:

- 4.1.1 An organizational chart of the overall company responding to this RFP. Include subcontractor(s) information, if any, within the organizational chart in **Appendix D**. Be sure to clearly designate information corresponding to the subcontractor's titles and roles (if applicable), in addition to that of the submitting organization's personnel.
- 4.1.2 A program-specific organizational chart showing the specific titles and roles and, if available, employees who will be slated to work on this project, including subcontractor(s), if any. Also, if applicable, include an approximate percentage of the award that will be allotted to any subcontractor(s) contributing to work on this program (see **Section 8** for further detail).
- 4.1.3 Identify and describe the functions of key staff who would be assigned to work with BERS under this contract, including any subcontractors, if applicable. Provide a summary of the professional credentials, qualifications, and experience of the lead point-of-contact and all key staff (including subcontractors) that would be assigned to work on the proposed services. Within the **Program Plan** in **Appendix E**, Proposers must provide details of the work of subcontractor(s), if any (see **Section 8** below for more information).
- 4.1.4 Resumes and, if applicable, copies of appropriate licenses/certifications of key personnel, including that of any subcontractor(s), who will provide the proposed services. Proposers must include information for subcontractor(s), if any, who will be working on the program within the **Proposal Form** in **Appendix D** (see **Section 8** below for more information).
- 4.1.5 Your organization's maximum capacity in providing the required services, based on current staffing levels.
- 4.1.6 Details on personnel available for the various components of the proposed services who are not full-time employees, including description of their role and responsibilities, and the approximate percentage of the work they will perform and/or would be responsible for.

4.2 DEMONSTRATED EFFECTIVENESS (APPENDIX D)

Proposer shall provide a description of all prior experience in the execution of the proposed services or similar services. In addition to the information submitted to meet the **Minimum Qualifications** required in **Section 2**, above, include:

- 4.2.1 Details of Proposer's background, qualifications, capabilities, and experience in providing these specific, or related services, as described in **Section 3** of this RFP. Please describe of any special or related skills and/or experience, including but not limited to:

- 4.2.1.1 Relevant Projects:** describe any projects similar in scope and complexity to the required services; highlight key achievements, outcomes, and lessons learned. Include details on the methods used, the objectives and results obtained by those methods. Provide objective data, if available (BERS reserves the right to verify any experience presented).
- 4.2.1.2 Innovative Solutions:** describe any innovative solutions or approaches your firm has implemented in previous projects of a similar scope and nature.
- 4.2.1.3 Diversity and Inclusion:** demonstrate your organization's commitment to diversity and inclusion in its workforce and in the solutions it provides to clients.
- 4.2.1.4 Continuous Improvement:** describe how your organization stays abreast of the latest trends and best practices in HR management and advisory services, ensuring continuous improvement in service delivery.

4.2.2 Any experience working with a public retirement system.

4.2.3 Proposer must submit three (3) letters of reference from organizations that have paid the proposer directly for the same or similar services as detailed in this RFP. Each reference must state the date(s), location(s), and description of the service(s) provided. Please also refer to the requirement under **Section 2.4, Minimum Qualifications**.

4.2.4 If any, list of government contracts, including with BERS, awarded to the proposer in the past ten (10) years. BERS reserves the right to verify a proposer's performance in the execution of such contracts.

4.3 PROGRAM PLAN (APPENDIX E)

4.3.1 The submitted Program Plan (**Appendix E**) must be a clear, detailed, rational, and concise description of the overall content, structure, resources, and methodology on how the Proposer's program will provide the services required in the Scope of Services in **Section 3**, above.

4.3.2 The Program Plan must show a clear understanding of the services required in this RFP and demonstrate how the proposed plan will meet the goals and objectives of this RFP. The Proposal must contain a work plan outlining the resources and tasks to comprehensively provide all services as described in this RFP. Additionally, the proposed plan must include how the Proposer will assess and report its successfulness in providing these services.

4.3.3 Proposer's Program Plan should also outline the following:

- 4.3.3.1 Technology and Resources:** detail the technology and resources your organization will utilize to conduct research and analysis for BERS, ensuring efficiency and accuracy.

Please note: Proposer must include in their proposal submission whether or not the Proposer will be using an automobile during the provision of services. If applicable, evidence of the appropriate motor vehicle liability insurance coverage will be required.

4.4 PRICING PROPOSAL (BUDGET)

Proposers must submit a **Pricing Proposal (Budget)** that provides detailed line-item pricing for all of the proposed deliverables/services. The unit prices in this form will be the basis for your invoices. **Prior to entering into a contract, BERS reserves the right to review the records used to calculate the costs associated with the prices depicted in the proposed budget for the selected proposal.**

4.4.1 Pricing Proposal (Budget)

- 4.4.1.1 The proposed budget must include all costs and/or fees, indicating hourly rate, fee schedule, or flat rate, to complete each deliverable based on the vendor's proposed services, including, but not limited to, preparation/pre-planning services, materials, etc.
- 4.4.1.2 Proposer must indicate whether pricing is based on consultant (staff) hours, fee for service, flat rate, a combination of these, or any other pricing model. Include any commissions and/or fees that the Proposer would expect to receive for their proposed services.
 - 4.4.1.2.1 Irrespective of the pricing model, the proposed budget must provide details, where applicable, of the estimated number of staff, estimated number of staff hours, and hourly rate, per deliverable, and/or breakdown of the components of a fee for service or flat rate, or any combination thereof, including any annual, monthly, and/or per diem costs.
- 4.4.1.3 The Pricing Proposal (Budget) must reflect all unit prices/fees, the extended total cost, and description of each line-item deliverable/service. Unit prices/fees must include all the costs associated with the services in the proposal for which a Proposer will be charging BERS. Proposers will not be able to invoice for items not included in the approved Pricing Proposal (Budget).
- 4.4.1.4 Unit prices/fees are maximum, not-to-exceed amounts that will be incorporated into the contract. Unit prices/fees proposed (or any component thereof) are not subject to upward adjustment.
- 4.4.1.5 Any materials offered through this contract must be ancillary to the services provided.

Note: In addition to the Pricing Proposal/Budget, Proposers may also include a budget narrative, if necessary, to further clarify their pricing structure.

4.4.2 Invoicing / Payments

- 4.4.2.1 BERS makes payment via Electronic Funds Transfer ("EFT") through Automated Clearing House ("ACH") transfers only. Payment will be made within thirty (30) business days upon receipt of invoice following provision of services. The contracted vendor will be required

to complete and submit a Vendor Electronic Fund Transfer Payment Enrollment Form along with a voided check and/or bank confirmation of the account information provided.

SECTION. 5 PROPOSAL EVALUATION PROCESS AND PROCEDURE

5.1 EVALUATION PROCEDURE

5.1.1 All proposals received by BERS will be reviewed to determine if they meet all of the submission and Minimum Qualifications prescribed in this Request for Proposals. Proposals meeting these requirements will be evaluated and rated by an Evaluation Committee applying the evaluation criteria prescribed below in **Section 5.2**. Proposals that are determined to be non-responsive will be eliminated from further consideration.

5.1.2 BERS reserves the right to conduct site visits to verify facility or other information contained in a proposal and may require a Proposer to make a demonstration/presentation of their services or submit additional written material in support of a proposal, where applicable.

5.1.3 The Evaluation Committee will choose the vendor that most closely satisfies the requirements of the RFP. The Evaluation Committee makes every attempt to match the submitted capacities of the highest rated firms with BERS' projected needs. One (1) vendor will be selected to provide the requested services. Proposers must address all the requirements set forth in the RFP. The proposer that presents the strongest response to the requirements will receive preference over proposers that superficially meet the requirements for the services described in the RFP.

5.1.4 Proposals submitted by vendors that are New York City-Certified M/WBEs or New York State-Certified M/WBEs will be provided the following quantitative preference:

5.1.4.1 Ten percent (10%) of the total points earned in the evaluation of the proposal.

5.1.4.2 Proposers that are New York City-Certified M/WBEs or New York State-Certified M/WBEs **must** include a copy of their M/WBE Certification Letter.

5.2 EVALUATION CRITERIA

The scoring matrix detailed below will be used to evaluate each submitted proposal. Proposals will be evaluated according to their identified Component(s). Criteria are worth the point values indicated for each evaluation category, adding up to a maximum possible total of **100 points**. The same criteria listed for each evaluation category will apply for each submitted proposal. The closer a proposal is to achieving the desired characteristics, the more points it will receive in each related category.

Organizational Capacity – Maximum: 30 points

- Established HR research firm with a proven record, offering access to a comprehensive database of HR research and tools that BERS can utilize.
- Strong and unequivocal evidence that the organization's human, organizational, technical, and professional resources and abilities can support the proposed services.

- Resumes of key personnel demonstrate the qualifications to deliver the program plan.
- Evidence of sufficient resources and expertise to deliver the services.
Systems and structures in place to ensure oversight of the project and adherence to timelines.

Program Plan – Maximum: 20 points

- Program Plan for providing the required services is clear, professional, and highly rational.
- Program design meets the specifications of the scope of services.
- Plan demonstrates a clear understanding of the program's needs, goals, and objectives, as specified in this RFP.

Demonstrated Effectiveness – Maximum: 30 points

- Demonstrate the ability to provide HR and Organizational Development (“O&D”) research-based framework templates and resources.
- The evidence of prior successful experience is detailed and directly related to the proposed services, including effective program design, management, and evaluation. Clearly articulated details on the methods used and results obtained by those methods.
- If any, satisfactory performance on government contracts.

Price – Maximum: 20 points

- Pricing Proposal (Budget) reflects a reasonable relationship to the proposed work.
- Competitiveness and appropriateness of the proposed costs.

5.3 BASIS FOR CONTRACT AWARD

A contract will be awarded to the highest ranked responsible Proposer(s) whose proposals are determined to be the most advantageous to BERS, taking into consideration the factors and criteria set forth in this RFP. Contract award shall be subject to the timely completion of contract negotiations between BERS and the selected Proposer(s), including the successful completion of background check review of the selected Proposer(s) and any subcontractor(s), if applicable.

SECTION. 6 PROPOSAL PACKAGE FORMAT AND SUBMISSION REQUIREMENTS

This RFP has two (2) forms for you to use in your Proposal response, **Appendices D and E**, which must be downloaded from the BERS website at: <https://www.bers.nyc.gov/site/bers/notices/requests-for-proposals.page>. These forms are in Adobe Acrobat (PDF) format. Proposers must submit a Pricing Proposal/Budget for their proposed services. Qualified and interested vendors are invited to respond to this RFP, provided these forms are used to submit responses to BERS by **no later than 4:00p.m. EST, April 1, 2025**

6.1 PROPOSAL INSTRUCTIONS

Proposers **must** prepare their Proposals in the format and sequence supplied below. **Failure to comply with this stipulation could be a basis for Proposal disqualification.** Supplemental information about the Proposer's products or services may be included as an addendum to the Proposal but not in place of the requirements listed below

(Sections 6.1 – 6.9). Additionally, please refer to **Section 11 – Proposer Checklist**, further below; this checklist of submission requirements is to help Proposers ensure their responses to this RFP are complete.

Proposals must include a **Cover Letter, Table of Contents, and sequential page numbers**. There is no specific limit on the number of pages applications may contain but **please be concise**.

6.2 PROPOSAL FORM (APPENDIX D)

Please review each of the following sections and subsections and respond accordingly using **Appendix D**.

1. Company Information
2. Minimum Qualifications (Section 2)
3. Letters of reference (Sections 2.4 and 4.2.3)
4. Organizational Capacity (Section 4.1)
5. Demonstrated Effectiveness (Section 4.2)
6. If any, previous Government Contracts information (Section 4.2.4)
7. Acknowledgement of Addenda and Q&A Document (process may be delayed if not signed)
8. Doing Business Data Form (process may be delayed if not completed and signed)
9. Price Certification Clause (process may be delayed if not signed)
10. BERS Ethics and Compliance Certification (process may be delayed if not signed)
11. Affirmation (process may be delayed if not signed)
12. Bidder's Certification of Compliance with Iran Divestment Act (process may be delayed if not signed)
13. Acknowledgement of the New York State Freedom of Information Law (process may be delayed if not signed)
14. Exceptions and Deviations Form (process may be delayed if not signed)
15. Signature Page (process may be delayed if not signed)

6.3 PROGRAM PLAN (APPENDIX E)

As required in **Section 4.3** of the RFP, in **Appendix E**, describe in detail the Proposer's program and methods to accomplish the services proposed. Include a work plan indicating approximate dates and frequency of services. If applicable, the Program Plan must also describe the work of all subcontractors. Use as much space as need, but **please be concise**.

- 6.4 Pricing Proposal/Budget should be submitted as a separate file, preferably, a Microsoft Excel file.
- 6.5 Your electronic submission must include separate files to represent each of the appendices which require the Proposer's input (i.e., D and E) plus the Proposer's Pricing Proposal/Budget.
- 6.6 Do not submit audio/video demonstrations tapes, diskettes, CDs, PowerPoint, or samples of materials unless otherwise specified.
- 6.7 Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (*formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change*).

All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, proposers to **RFP # 2025-001** must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. **Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings.**

For more information about PASSPort, please visit: <https://www.nyc.gov/site/mocs/passport/about-passport.page>.

Any subsequent reference to “VENDEX” or “VENDEX Questionnaire” in this solicitation, including the Appendices, shall be replaced with PASSPort Disclosure filing.

6.8 DOING BUSINESS DATA FORM (APPENDIX D)

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the City" as such terms are defined in the Local Law. In order for the City to obtain the necessary information to establish the required database, vendors responding to this solicitation should complete the Doing Business Data Form (**Appendix D**), which may also be downloaded from the attached link located at: <http://www.nyc.gov/html/dot/weekendwalks/downloads/pdf/doing-business-data-form-2018.pdf>.

Complete this form and return it with your proposal. The submission of a Doing Business Data Form that is not accurate and complete may result in appropriate sanctions.

6.9 SUBMISSION REQUIREMENTS

Proposal submissions in response to this RFP **must** be sent via electronic mail (the “Proposal Submission Email”) to BERSProcurement@bers.nyc.gov (the “RFP Submission Email Address”). **Proposals submissions sent to any other email address will be disregarded.** The subject line of your Proposal Submission Email must include the solicitation number and the name of the submitting vendor (e.g., **RFP # 2025-001 Proposal – ABC Corporation**). Please attach the complete RFP solicitation, including all appendices, attachments, Q&A, addendums (if any), and your Proposal submission documents to the Proposal Submission Email as separate files.

If the files accompanying your Proposal submission are too large to be transmitted as email attachments, please include in the first line of your Proposal Submission Email a link to a Microsoft OneDrive (“OneDrive”) folder containing all of your submission-related documents. Please note that if you are using OneDrive, do not attach any documents to the Proposal Submission Email. Further, please include a dedicated submission folder within your OneDrive folder that will include all the files related to your Proposal submission files. Please name this folder **“RFP # 2025-001 Proposal.”** The name of your OneDrive submission folder must match the subject line of your Proposal Submission Email. Your OneDrive submission folder must not contain any files unrelated to your Proposal submission.

Guidance for First-Time Microsoft OneDrive Users

Microsoft OneDrive is a file hosting and synchronization service operated by Microsoft as part of its web version of Microsoft Office. OneDrive allows users to grant access to files which are too large to transmit via electronic mail to

other users. If you do not have Office 365, please take the following steps to gain access to a free version of OneDrive so that you can upload your Proposal submission documents which are too large to transmit via electronic mail.

1. Conduct an internet search for "Microsoft OneDrive."
2. Navigate to the official Microsoft website and sign up for a free account.
3. Once you have created a submission folder for the solicitation whose name matches the subject line of your Proposal Submission Email (e.g., **RFP # 2025-001 Proposal**), upload all required documents relevant to your Proposal submission in this folder. Proposers must also upload the complete RFP solicitation, including all appendices, attachments, Q&A, and addendums (if any).
4. Create a share link for the submission folder.
5. Be sure to check your share settings so that anyone receiving the link that you create will be able to open the link and access all files. If your share link permissions are restricted (e.g., to only your organization in Office 365), BERS will not be able to view your submission documents. **It is your responsibility to ensure the link you provide allows BERS to view, download, and open all your submission documents;** and,
6. Include the link, which you have created, as the first line in the body of your Proposal Submission Email.

SECTION. 7 REQUEST FOR PROPOSALS TIMETABLE AND GENERAL INFORMATION

7.1 REQUEST FOR PROPOSALS (RFP) TIMETABLE

- RFP Release Date: **February 18, 2025**
- Deadline for vendors to submit written inquiries via email: **no later than 4:00 P.M. EST on March 4, 2025,**
- Posting of Questions and Answers ("Q&A") document: **on or about March 18, 2025**
- **Proposals Due Date: no later than 4:00 P.M. EST on April 1, 2025**

PROPOSALS RECEIVED AFTER THE SPECIFIED DATE AND TIME WILL NOT BE CONSIDERED OR ACCEPTED.

7.2 REQUESTS FOR CLARIFICATION AND ADDENDA

Any inquiry regarding this solicitation must be made **in writing**. No telephone calls will be accepted regarding this RFP. All written inquiries may be emailed to the following authorized email address:

Email: BERSProcurement@bers.nyc.gov

New York City Board of Education Retirement System (BERS)

RFP questions may be submitted at any time to the email address indicated above prior to the deadline for submitting written questions.

The deadline for submitting questions on this RFP is **no later than 4:00P.M. EST, March 4, 2025**. Proposers are advised that BERS is not able to ensure it shall respond to inquiries received after this date and time. All queries will be addressed in the written Q&A document, which will be published on or about **March 18, 2025**.

Proposers should not rely on any representations, statements, or clarifications not made in this RFP or a formal addendum.

7.3 INCURRING COSTS

BERS shall not be held liable for any pre-contract activity or costs incurred by Proposers in the preparation of their proposals or during any negotiations on proposed contracts or for any work performed or materials provided in connection therewith.

7.4 ORAL PRESENTATIONS/DEMONSTRATIONS

BERS may require Proposers to give oral presentations after the Closing Date regarding their proposals. At such presentations, Proposers may be required to demonstrate or exhibit aspects relating to their proposal as requested by BERS.

7.5 NEGOTIATIONS

BERS reserves the right to:

1. Reject all proposals submitted.
2. Accept any proposal or alternate as submitted without negotiations.
3. Accept or negotiate on all proposals submitted which fall within a competitive range.
4. Require revisions to, corrections of, or other changes to any proposal submitted as a condition to its being given any further consideration.
5. Select for negotiations only the overall best proposal, or alternate submitted, as determined by BERS.
6. Negotiate with one or more Proposers in any manner it deems fit, (such negotiations may be concurrent or sequential as BERS determines).
7. Following the conclusion of any such negotiations, BERS may solicit Best and Final Offers (BAFO) utilizing an appropriate procedure.
8. Re-open negotiations after the BAFO procedure if it is in BERS' best interest to do so.

No Proposer shall have any rights against BERS arising at any stage of the solicitation from any negotiations that take place, or from the fact that BERS does not select a Proposer for negotiations.

7.6 WITHDRAWAL OF PROPOSALS

A Proposer may withdraw its proposal prior to the designated due date and time by written email notice received by BERS to the authorized email address indicated in **Section 6.9**. The subject line of the withdrawal email must include (1) the solicitation number, (2) the words: "*Proposal Withdrawal*," and (3) the name of the vendor withdrawing their proposal (e.g., **RFP # 2025-001 Proposal Withdrawal – ABC Corporation**). After the receipt of proposals by the designated due date and time, a request by a Proposer to withdraw its proposal because of an error made by the Proposer will be considered **only** under the following terms and conditions:

7.6.1 Request to withdraw proposal must be received in writing, via email notice, to BERSProcurement@bers.nyc.gov providing reasons for the request and must be received within three (3) business days following the date and time set for the submission of proposals.

7.6.2 Whenever any Proposer requests the consent of BERS for the withdrawal of their Proposal, BERS may grant or reject such request in any case deemed just and proper. This request shall be made, and such consent to withdraw shall be granted, if so determined by BERS, upon the express condition that said Proposer shall be excluded from proposing again for the re-solicitation of proposals for the same item or proposal, should no award be made.

7.6.3 BERS will make the determination with respect to a request for the withdrawal of proposals and that determination shall be final and binding. Any withdrawal of a proposal must be in its entirety (partial withdrawals will not be permitted).

7.7 TERMS AND CONDITIONS

All contracts resulting from this RFP shall be subject to the attached Terms and Conditions (**Appendix C – BERS Terms and Conditions**). Exceptions and deviations agreed to by the parties in any prior contracts shall not be binding on any future contracts, awards, or agreements emanating from this RFP. You must clearly restate in the deviations section of the RFP any exceptions and deviations that you may have from this RFP.

7.8 NOTICE TO LOW OFFERERS

The fact that an offeror (“Respondent”) submits the lowest offer does not constitute contract award. Other factors, such as conformity of the offer to the solicitation, that is, the offeror’s responsiveness, must be considered. No contractual obligation or liability on the part of BERS shall exist unless and until the contract is awarded. Therefore, no offeror should begin work on the services called for in this solicitation until after formal notice of contract award has been made by BERS.

7.9 CONTRACT AWARD

The New York City Board of Education Retirement System (“BERS”) reserves the right to award a contract(s) to other than the proposer(s) offering the lowest overall cost. The contract(s) resulting from this solicitation shall be awarded to the qualified proposer(s) whose proposal(s) BERS has determined to be the most advantageous, based on the evaluation criteria set forth in this RFP. All contracts resulting from this RFP shall be signed by the proposer(s) within a reasonable time upon receipt.

Contract award(s) shall be subject to the following conditions, where applicable. They are not required to be part of the Proposer’s proposal submission.

7.9.1 Completion and submission of an appropriate Office of Equal Opportunity form, e.g., Workforce profile or Company’s Equal Opportunities Work plan.

7.9.2 Completion and submission of the appropriate PASSPort Disclosure filings.

7.9.3 Completion and submission of the Affirmation Sheet.

7.9.4 Submission of an appropriate Certificate of Insurance and Broker's Certification. If your insurance expires during the course of this process, it is your responsibility to forward renewal documents.

7.9.5 All vendors are required to maintain accurate contact information: organization contact person, address, telephone number, and email. If changes occur, the vendor must notify BERS of said change.

7.10 TERMINATION OF CONTRACT

Any contract(s) resulting from this RFP may be terminated at any time upon thirty (30) days' written notice by BERS' Executive Director and/or his/her designee. No claim for damages will be made by, or allowed to, the Contractor because of such termination.

7.11 IMPORTANT NOTE

The onus is upon the Proposer to offer competitive pricing and to keep exceptions to BERS terms and conditions to a minimum. We would prefer that the Proposer accept our Standard terms and conditions and contract template provisions without ANY exceptions. However, if there is anything that the Proposer feels they must take exception to, please indicate that in the proposal submission. We will negotiate commercial agreements with the Proposer and dispose of legal issues, insurance requirements, exceptions to the Standard Terms and Conditions if, and only if, the proposals are considered to be competitive. Following these negotiations, we may request a Best and Final Offer (BAFO) from vendors still considered to be in the competitive range. We reserve the right to reject any exceptions or deviations not addressed at the time the proposal is submitted. Please note, past practice does not dictate BERS' obligation to accept any request for such exceptions and deviations noted in each individual proposal.

7.12 PROHIBITION OF COMMUNICATIONS DURING THE RFP EVALUATION PERIOD

After the submittal of proposals and continuing until a contract has been awarded, all BERS Personnel involved in the project will be specifically directed against holding any meetings, conferences, or technical discussions with any Proposer regarding this RFP, except as provided in this RFP. Proposers shall not initiate communication in any manner with BERS personnel regarding this RFP or the proposals during this period of time, unless authorized, in advance, by the selection committee. Failure to comply with this requirement will automatically terminate further consideration of that firm's or individual's proposal.

7.13 PUBLICITY AND SOLICITATION

The contractor shall not issue any press releases or public statements regarding its contract with BERS without the prior written approval from BERS. Unless directed to do so by BERS, the contractor shall refrain from contacting BERS staff members other than the Contract Manager and his/her staff.

[NO FURTHER TEXT ON THIS PAGE]

SECTION. 8 SUBCONTRACTING REQUIREMENT

Proposers must identify all subcontractors that will assist with the delivery of the vendor's proposed services. Provide Subcontractor's Name, EIN Number, and a detailed plan for the subcontractor's work proposed in **Appendix E (Program Plan)** and all other information requested in **Appendix D (Proposal Form)**. Please be advised that a subcontractor will be required to complete the required online disclosure filling in PASSPort (see **Section 6.7**) in accordance with the same guidelines that govern contractors. If applicable, clearly provide an estimated percentage of the work to be allocated to the subcontractor(s) assisting in the delivery of the proposed services.

SECTION. 9 CONTRACT TERM

The contract resulting from this RFP will be for a term of one (1) year. BERS reserves the unilateral option to renew the contract for two (2) additional one-year periods. All contract terms and conditions shall remain in effect for the full term of the contract(s) and any extension(s) thereof.

SECTION. 10 TYPE OF CONTRACT

This RFP may result in the award of one (1) full value (not-to-exceed) agreement.

Full value agreements allow contractors to be reimbursed for goods and/or services rendered at agreed-upon prices, as set forth in the contract. Full value agreements are not commitments to purchase. Only a purchase order issued by BERS constitutes such a commitment.

The estimated contract award of a full value contract is a maximum, not-to-exceed amount. BERS may purchase all, none, part, or up to the maximum amount identified in the **Pricing Proposal (Budget)**, based on need and budget availability.

SECTION. 11 PROPOSER CHECKLIST

Please ensure that the Proposer has received each of the following documents for response. The attachments include the following documents for submitting the proposal response:

Documents for submitting the proposal:

1. Cover Letter
2. Table of Contents
3. Three (3) Letters of Reference
4. If any, list of Government contracts within the past ten (10) years.
5. Proposal Form (**Appendix D – all forms**, Adobe Acrobat File)
6. Program Plan (**Appendix E**, Adobe Acrobat File)

7. Pricing Proposal/Budget (preferably, Microsoft Excel File)
8. A copy of the published Q&A document (if any)
9. A copy of all attachments and addendums posted (if any)
10. Doing Business Data Form (**Appendix D**, Adobe Acrobat File)

Form may also be downloaded at: <http://www.nyc.gov/html/dot/weekendwalks/downloads/pdf/doing-business-data-form-2018.pdf>.

Additional information may be found at: <https://www.nyc.gov/site/mocs/opportunities/dba.page>.

11. Copy of **Appendix A4** – Whistleblower Protection Expansion Act Poster (Adobe Acrobat File)

Also, please be sure to:

12. Review the entire Request for Proposals solicitation to ensure an understanding of the scope of the requirements and the role of each of the attached forms. **Please review the Scope of Services for this RFP carefully before completing the response sections.**
13. View the Terms & Conditions (**Appendix C**) in this document. Some of the Terms & Conditions may have changed since the last RFP.

SECTION. 12 PROPOSAL PROCESS REPORTING

- 12.1 Any vendor who believes that there has been unfairness, favoritism, or impropriety in the RFP process should inform the BERS General Counsel 55 Water Street, 50th Floor New York, NY 10041.
- 12.2 Reports of criminal misconduct or conflicts of interest associated with the RFP process shall be directed to the Special Commissioner of Investigation for the New York City School District, 80 Maiden Lane, 20th Floor, New York, NY 10038, (212) 510-1500.

[NO FURTHER TEXT ON THIS PAGE]

APPENDIX A1: NO PROPOSAL RESPONSE FORM

RFP Number and Title: RFP # 2025-001 – HR Advisory Services

Proposal Due Date: April 1, 2025

PLEASE COMPLETE AND RETURN THIS FORM IF YOU WILL NOT BE SUBMITTING A PROPOSAL BUT WISH TO REMAIN ON THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM'S BIDDERS LIST.

Feedback from vendors is also encouraged so that any reasons for not proposing may be evaluated with the intention of improving future solicitations for this commodity or service in the hopes of encouraging and expanding the field of competition.

All vendors who respond with a "No Response" response or choose not to propose, are asked to provide the information requested below and return this form by the proposal due date.

REASONS FOR NOT PROPOSING AT THIS TIME:

VENDOR NAME AND ADDRESS:

Signed: _____

Name: _____

Title: _____

Date: _____

APPENDIX A2: MINORITY- AND WOMEN-OWNED BUSINESS ENTITIES PARTICIPATION

The New York City Board of Education Retirement System (“BERS”) strongly encourages the substantive participation of Minority- and Women-Owned Business Enterprises (“M/WBE”) in this engagement. A Proposal submitted in response to this RFP will be deemed as M/WBE participation if the Prime contractor (the vendor submitting the Proposal) is identified by a governmental agency as a certified M/WBE. No rating points are assigned for M/WBE status, except as specified in **RFP Section 5.1.4**.

We strongly advocate participation of Prime contractors who demonstrate a clear and strong commitment to, and support of equal employment opportunity and employee civil rights, as well as, Prime or subcontractors showing a high level of commitment to the principles incorporated in Title VI and Title VII of the Civil Rights Act of 1964, and with all applicable Federal, State and City Laws and for clear demonstration of implementation thereof.

Demonstration of commitment and implementation may consist of, but not be limited to, the following, as documented by supporting data and materials, to be provided by the proposed with its response to this RFP:

- Submit a copy of your M/WBE certification letter from a governmental agency.
- A record of hiring, placement, training, and promotional practices which permit access to all levels within the firm’s organization by women, minority, disabled, and other employee groups covered by the Civil Rights Act of 1964.
- Policies, initiatives, and programs which discourage discrimination against individuals on the basis of age, color, sex, national origin, citizen status, religion, sexual orientation, pregnancy or pregnancy-related conditions, and/or promotes the welfare of people with disabilities, including mentally and physically disabled employees and disabled veterans.
- Recognition of the efforts above by government agencies, nationally recognized civil rights organizations, or other appropriate groups.

[NO FURTHER TEXT ON THIS PAGE]

APPENDIX A3: APPLICATION FOR AUTHORITY IN NYS

BERS requires proof of Qualification in the State of New York. If the Proposer is a foreign entity (formed outside of the State of New York) and the performance of the services required in this RFP would qualify as “doing business” in NY State, the Proposer must provide proof of filing an Application for Authority with NYS Department of State.

The Application for Authority can be found at: <https://dos.ny.gov/application-authority-foreign-business-corporation>.

The Application for Authority and accompanying forms must be sent directly to the NYS Department of State. BERS only requires evidence of filing.

If such qualification is inapplicable to the Proposer as a foreign entity, and you do not consider the work to be performed as “doing business” in NY State, please provide a written explanation.

[NO FURTHER TEXT ON THIS PAGE]

APPENDIX A4: WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER

REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT
RELATING TO A NYC-FUNDED CONTRACT
OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATION

212-825-5959

**DOI CAN ALSO BE REACHED BY MAIL
OR IN PERSON AT:**

**New York City Department of
Investigation (DOI)**

**80 Maiden Lane, 17th floor
New York, New York 10038**

Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:

www.nyc.gov/doi

All communications are confidential



**Or scan the QR Code above
to make a complaint**

**THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.

APPENDIX B: INSURANCE

- A. **Duty to Maintain Insurance.** The Contractor shall not commence performing services under this Contract unless all insurance required by this Contract is in effect. The Contractor shall ensure continuous insurance coverage in the manner, form, and limits required by this Contract.
- B. **Types of Insurance Required.** The Contractor shall maintain the following types of insurance indicated below. Where this Contract requires that insurance be “at least as broad as” a specified form (including forms issued by the Insurance Services Office (ISO)), there is no obligation that the form itself be used, provided that the alternative form contained in its policy provides coverage at least as broad as the specified form.
- (1) *Commercial General Liability Insurance.* The Contractor shall maintain Commercial General Liability Insurance (“CGL”) covering claims for property damage and bodily injury, including death, and personal and advertising injury that may arise from any of the operations under this Contract. Such CGL must:
 - a. be in the amount of at least **\$1,000,000** per occurrence for bodily injury, including death, and property damage and at least **\$2,000,000** in the aggregate, unless this is a construction contract and higher limits are required by the Department of Buildings pursuant to 1 RCNY section 101-08, in which case the limits of CGL must meet or exceed those limits required by the Department of Buildings.
 - b. provide coverage for personal and advertising injury in the amount of at least **\$1,000,000** unless waived in writing by the Executive Director or Designee.
 - c. provide coverage that is at least as broad as the coverage provided by the latest edition of ISO Form CG 00 01.
 - d. be “occurrence” based rather than “claims made.”
 - e. list the “the Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees” as additional insureds with coverage at least as broad as the latest edition of ISO Form CG 20 10 or ISO Form CG 20 26.
 - f. not include an exclusion that is not included in the latest edition of ISO Form CG 00 01, unless such exclusion is approved in writing by BERS.
 - (2) *Workers’ Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance.* The Contractor shall provide, and shall cause its subcontractors to provide, Workers’ Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.
 - (3) *Commercial Automobile Liability Insurance.* If vehicles are used in the provision of services under this Contract, the Contractor shall provide Commercial Automobile Liability Insurance in a combined single limit of at least **\$1,000,000** for each accident for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the Commercial Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement ISO Form CA 99 48) and MCS-90.

- (4) *Professional Liability Insurance.* Unless waived in writing by the Executive Director or Designee, if the Contractor is providing professional services under this Contract, for which Professional Liability Insurance is commercially available, the Contractor shall maintain Professional Liability Insurance appropriate to the type(s) of such services in the amount of at least **\$1,000,000** per claim.
- a. Unless waived in writing by the Executive Director or Designee, the Contractor shall cause its subcontractors that provide professional services under this Contract for which Professional Liability Insurance is commercially available to maintain Professional Liability Insurance appropriate to the type(s) of such services in the amount of at least **\$1,000,000** per claim.
 - b. BERS will accept occurrence or claims-made policies for Professional Liability Insurance. Claims-made policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.
- (5) *Contractors Pollution Liability Insurance.* If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs or any other hazardous materials or substances, the Contractor shall maintain, or cause the subcontractor doing such work to maintain, Contractors Pollution Liability Insurance covering bodily injury and property damage. Such insurance shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including asbestos), including any loss, cost or expense incurred as a result of any cleanup of pollutants (including asbestos) or in the investigation, settlement or defense of any claim, action, or proceedings arising from the operations under this Contract. The Contractors Pollution Liability Insurance shall contain no exclusion for naturally occurring hazardous substances. Coverage shall include, without limitation, (a) loss of use of damaged property or of property that has not been physically injured, (b) transportation, and (c) non-owned disposal sites. Such Contractors Pollution Liability Insurance must:
- a. be in the amount of at least **\$1,000,000** per occurrence and **\$2,000,000** in the aggregate.
 - b. list the “the Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees” as additional insureds with coverage at least as broad as the coverage provided to the Contractor for the work.
 - c. If such insurance is written on a claims-made policy, such policy shall have a retroactive date on or before the effective date of this Contract, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three (3) years from the time the work under this Contract is completed.

C. General Requirements for Insurance.

- (1) *Insurance Policy Deductibles, Self-Insured Retentions, and Self-Insurance Programs.* Any deductibles or retentions in excess of \$5,000 shall be disclosed by the Contractor and shall be subject to advance written approval by the Executive Director or Designee. Any deductible or retention amounts elected by the Contractor and/or imposed by the Contractor’s insurer(s) shall be the sole responsibility of the Contractor. The Contractor shall be permitted to provide insurance of any type required under this Contract by means

of a self-insurance program (or make use of any self-insured retention)^[1] *only* in the event (a) such program provides BERS and the City, including their respective officials and employees, with all rights that would be provided by traditional insurance required by this Contract including, but not limited to, the defense obligations that insurers are required to undertake in liability policies, and (b) such self-insurance program is approved in advance by the Executive Director or Designee. If the Contractor desires to provide any such insurance by means of a self-insurance program, the Contractor shall submit a statement satisfactory to the Executive Director or Designee, signed by a party authorized to bind the Contractor and acknowledged by a notary public, by which the Contractor (i) affirms that such self-insurance program provides at least the same level of coverage as required by this Contract, (ii) agrees to assume responsibility for satisfying all obligations of the self-insurance program if such program for any reason fails to do so, and (iii) provides BERS with the name and address of the office or official of its self-insurance program who is responsible for satisfying the self-insurance obligations. The foregoing requirements for advance approval include, but are not limited to, the Contractor's formation of, and/or participation in, any other alternative risk management arrangement(s) as a substitute for a traditional insurance policy(ies). In addition, the Contractor must provide the BERS Contract Manager with a written set of detailed rules and procedures for BERS and/or the City to file a claim(s) and to obtain coverage under any risk retention fund(s) and/or any other alternative risk management arrangement(s) including, but not limited to, any required claim form(s), contact information, and any information required to be submitted with a claim(s). The Contractor's rules and procedures for submitting a claim(s) and obtaining coverage under any risk retention fund(s) and/or any other alternative risk management arrangement(s) shall be subject to approval by the Executive Director or Designee. Approval of any proposed self-insurance program, other alternative risk management arrangement(s) and the rules and procedures for submitting a claim(s) and obtaining coverage is at the sole discretion of BERS. As determined by the Executive Director or Designee, any unreasonable failure and/or refusal by the Contractor and/or its agent(s) to accept and process a claim(s) from BERS, the City and/or their agent(s) and/or any unreasonable disclaimer(s) of coverage by the Contractor and/or its agent(s) shall entitle BERS to deduct from any compensation due and owing to the Contractor the amounts, as determined by BERS and/or the City, of any and all resulting losses, damages, expenses (including, but not limited to, reasonable attorney fees), claims, demands, judgments, suits, allegations, liabilities, settlements and/or other costs that BERS and/or the City, including their respective officials and employees, shall incur regarding any affected claim(s) and/or denial of coverage. The foregoing provisions shall apply equally to any subcontractor(s).

- (2) All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-/VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the City Corporation Counsel, unless prior written approval is obtained from the City Corporation Counsel.
- (3) The Contractor shall be solely responsible for the payment of all premiums for all required insurance.

^[1] Included here are any combinations, limited partnerships, joint ventures, and/or any other combined activities in which the Contractor and/or any subcontractor(s) may participate.

- (4) BERS' and the City's limits of coverage for all types of insurance required in this Contract shall be the greater of (i) the minimum limits set forth herein or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.
- (5) Policies of insurance provided pursuant to this Contract shall be primary and non-contributing to any insurance or self-insurance maintained by BERS and the City.
- (6) The Contractor may satisfy its insurance obligations under Contract through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

D. Proof of Insurance.

- (1) For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) days of award of this Contract. ACORD forms are not acceptable proof of such insurance.
 - a. Form C-105.2, Certificate of Workers' Compensation Insurance;
 - b. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;
 - c. Form SI-12, Certificate of Workers' Compensation Self-Insurance;
 - d. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
 - e. Form DB-120.1, Certificate of Disability Benefits Insurance;
 - f. Form DB-155, Certificate of Disability Benefits Self-Insurance;
 - g. Form CE-200 – Affidavit of Exemption;
 - h. Equivalent or successor forms authorized by the New York State Workers' Compensation Board;
or
 - i. Other proof of insurance in a form acceptable to BERS.
- (2) For each type of insurance required by this Contract except for Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall submit within ten (10) days of award of this Contract or such other time as may be specified by the Executive Director or Designee:
 - a. A Certificate of Insurance on a form acceptable to the Executive Director or Designee, a duly executed Certification of Insurance Broker or Agent (in the form available at https://infohub.nyced.org/docs/default-source/default-document-library/procurement-insurance_certification_by_broker_form.pdf?sfvrsn=52b89163_2), and the endorsement or policy provision containing the required coverage as an additional insured and, if applicable, loss payee.
 - i. If the Certificate of Insurance form contains a space to indicate the "certificate holder," such space shall list: The Board of Education Retirement System of the City of New York, 55 Water Street, 50th floor, New York, NY 10004.
 - ii. The Certificate of Insurance form(s) evidencing CGL shall state: "The Board of Education Retirement System of the City of New York and the City of New York, including their

respective officials and employees are additional insureds” or similar language acceptable to the Executive Director or Designee.

-OR-

- b. A copy of the complete insurance policy(ies) as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time the Contractor shall submit a certified copy of the policy.
- (3) The Contractor shall submit documentation confirming renewals of insurance to BERS prior to the expiration date of coverage of policies required under this Contract. Such documentation shall comply with the requirements concerning proof of insurance in paragraphs (1) and (2) above.
- (4) The Contractor shall provide BERS and/or the City with a copy of any policy of insurance required by this Contract upon the demand for such policy by the Executive Director, or the Executive Director’s Designee, or the City Corporation Counsel.
- (5) Acceptance by the Executive Director or Designee of proof of insurance does not excuse the Contractor from maintaining policies consistent with all provisions of this Contract (and ensuring that subcontractors maintain policies that are required under this Contract) or from any liability arising from its failure to do so.
- (6) In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under Contract shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Board of Education Retirement System of the City of New York, 55 Water Street, 50th Floor, New York, New York 10004, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

E. Miscellaneous.

- (1) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under any insurance policy maintained in accordance with this Contract that is required to include BERS and the City as an additional insured and/or loss payee, the Contractor shall provide the insurer with timely notice thereof on behalf of BERS and the City, including their respective officials and employees. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor’s employees was injured). Such notice shall expressly specify that “this notice is being given on behalf of the Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees as Additional Insured [and, if applicable, Loss Payees]” and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007 and the Board of Education Retirement System’s General Counsel at 55 Water Street, 50th Floor,

New York, New York 10004. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify BERS and the City, including their respective officials and employees, for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of BERS and/or the City, including their respective officials and employees.

- (2) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Contract, the Contractor shall at all times fully cooperate with BERS and the City with regard to such potential or actual claim.
- (3) The Contractor's failure to maintain any of the insurance required by this Contract shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by BERS or the City at any time.
- (4) Insurance coverage in the minimum amounts required in this Contract shall not relieve the Contractor or its subcontractors of any liability under this Contract, nor shall it preclude BERS and/or the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Contract or law.
- (5) Apart from damages or losses covered by Workers' Compensation Insurance, Employers' Liability Insurance, Disability Benefits Insurance, Commercial Automobile Liability Insurance, and Professional Liability Insurance, the Contractor waives all rights against BERS and the City, including their respective officials and employees, for any damages or losses that are covered under any insurance required under this Contract (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Contract.
- (6) If the Contractor requires any subcontractor to procure insurance with regard to any operations under this Contract and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list BERS and the City, including their respective officials and employees, as an additional insured. For CGL, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

INDEMNIFICATION AND RELATED OBLIGATIONS

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

respective officials or employees from being completely indemnified by the Contractor, BERS, the City, and their respective officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by law.

- B. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless BERS and the City, including their respective officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which BERS, the City, or their respective officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, contractors, or subcontractors in the performance of this Contract. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless BERS, the City, and their respective officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Contract's scope of services/scope of work. Insofar as the facts or law relating to any of the foregoing would preclude BERS, the City, and their respective officials and employees from being completely indemnified by the Contractor, BERS, the City, and their respective officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by law.
- C. The Contractor's obligation to indemnify, defend and hold harmless BERS, the City, and their respective officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Contract, nor (ii) adversely affected by any failure on the part of the BERS, the City, or their respective officials or employees to avail themselves of the benefits of such insurance.

[NO FURTHER TEXT ON THIS PAGE]

This is a sample certificate of insurance (COI) form. As applicable, upon contract award, obtain an original certificate from your insurance broker and submit to BERS. The City of New York and the Board of Education of the City of New York must be included as additional insureds. BERS must be listed as the certificate holder.

		<h2 style="margin: 0;">CERTIFICATE OF LIABILITY INSURANCE</h2>		<div style="border: 1px solid black; padding: 2px;">DATE (MM/DD/YYYY)</div>																																											
<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</p>																																															
<p>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</p>																																															
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CERTIFICATES OF INSURANCE

Instructions to the Board of Education Retirement System of the City of New York

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

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

-- OR --

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

CERTIFICATION BY INSURANCE BROKER OR AGENT

APPENDIX C: BERS TERMS AND CONDITIONS

1. Captions

The headings in this Agreement, the paragraphs, and subparagraphs of this Agreement, and of any attachments, are included solely for convenience and reference, and they shall not be used in any way to interpret this Agreement.

2. Compliance With Laws

In connection with the performance of this Agreement, the Contractor shall comply with all applicable laws, rules and regulations. The parties hereto agree that every provision of law required to be inserted herein be deemed a part hereof. It is further agreed that if any such provision is not inserted or is incorrectly inserted, through mistake or otherwise, this Agreement shall be deemed amended so as to comply strictly with the law.

3. Unlawful Provisions Void

If this Agreement contains any unlawful provision or portions thereof, they shall be deemed deleted from the Agreement and the remainder of the Agreement shall remain in full force and effect. If the deletion of such provision frustrates the purpose of this Agreement, either party may make application to the Evaluation Committee for relief.

4. Religious Activity Prohibited

There shall be no religious worship, instruction, proselytizing, or other religious activity in connection with the performance of this Agreement.

5. Political Activity Prohibited

No BERS property provided to the Contractor hereunder for the purpose of this Agreement shall be used for any political activity or to further the election or defeat of any candidate for public office. As used herein the term "BERS property" shall include, but not be limited to, supplies, work sites, funds advanced and services.

6. Publication And Publicity

The Contractor or anyone employed by the Contractor may not publish the results of its participation or findings in the performance of this Agreement without the prior written approval of the Chair of the BERS Board of Trustees or his/her designee. All approved publications shall acknowledge that the program is supported by funds from BERS. Ten (10) true copies of each approved publication shall be furnished to BERS without charge.

7. Copyright

If the Contractor or anyone employed by the Contractor shall write, record or otherwise produce copyrightable material within the scope or in furtherance of this Agreement, BERS shall be considered the author for purposes of copyright, renewal of copyright, and termination of copyright and, unless expressly waived in a written instrument signed by the Chair of the Board of Trustees or her designee, the owner of all of the rights comprised in the copyright.

8. Patents

Any invention or discovery arising out of or developed in furtherance of this Agreement shall be promptly and fully reported to BERS. BERS shall have the exclusive right to apply for patent protection on such invention or discovery and to determine how the rights in said invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered.

9. Accounting for Property

If any property is acquired by the Contractor with funds provided by BERS under this Agreement, the property shall be deemed purchased by BERS for the use of the Contractor during the term of the Agreement and shall be permanently embossed "Property of New York City Board of Education Retirement System" and shall be returned to BERS, at the Contractor's expense, within thirty (30) days after the end of said term, unless the Contractor is otherwise notified in writing by the Executive Director or his designee.

10. Non-Reimbursable Expenses

The following items may not be claimed as a direct or indirect cost of the services provided under this Agreement:

- A. rental expenses of apartments;
- B. interest on loans;
- C. penalties for delinquent filing of tax returns;
- D. political or charitable contributions;
- E. advertising and promotions;
- F. legal expenses;
- G. key-man life insurance premiums;
- H. federal, state and city income tax; state and city franchise taxes; and costs for the preparation of such tax returns;
- I. expenses incurred in preparing for operations;
- J. cost of employee meals and lodging except when traveling outside the city and pursuant to the specifications of the contract;
- K. entertainment, gratuities, and any other items of a personal nature;
- L. long distance telephone calls unless directly related to the services provided under the terms of this Agreement;
- M. any expense not ordinary, necessary or reasonable in the performance of the Agreement.

11. No Extra Compensation

The Contractor shall not seek, ask for, demand, sue for or recover, as extra compensation or otherwise, any sum for labor, materials or services other than the compensation agreed upon and fixed.

12. Invoices And Payments

The Contractor shall furnish proof with each invoice, and shall comply with all BERS requirements concerning the manner in which invoices are to be submitted. The Contractor shall not be entitled to demand or receive full or partial payment, until each and every one of the provisions of this Agreement is complied with, and the Executive Director or his designee shall have given written certification to that effect. Nothing contained herein shall be construed to affect the right hereby reserved by BERS to reject the whole or any portion of the performance, should said certification be inconsistent with the terms of this Agreement, or otherwise erroneously given.

13. No Estoppel

BERS shall not be precluded or estopped by a statement or document issued by or on behalf of BERS, from indicating the true value of services performed by the Contractor or by any other person pursuant to or as a result of this Agreement.

14. Acceptance of Final Payment

Receipt and negotiation by the Contractor, or by any person claiming under this Agreement, of the Final Payment hereunder, notwithstanding whether such payment be made pursuant to any judgment or order of any court, shall constitute a general release of BERS from any and all claims and liability for anything done, furnished, or relating to the labor, materials or services provided, or for any act of omission or commission of BERS or its agents and employees. Said release shall be against the Contractor, the Contractor's representative, heirs, executors, administrators, successors and assigns.

15. Claims -Limitation of Action

No action at law or equity shall be maintained by the Contractor, its successors, against BERS on any claim based upon or arising out of this Agreement, or out of anything done in connection with this Agreement, unless such action shall be commenced within six (6) months after the date of filing of the voucher for final payment hereunder, or within six (6) months of the required completion date for the services performed hereunder, whichever is sooner. None of the provisions of Article 2 of the Civil Practice Law and Rules shall apply to any action against BERS arising out of this Agreement.

16. Notices

The Contractor's address stated on Page 1 of this Agreement is hereby designated as the place where all notices, letters or other communications directed to the contractor shall be served, mailed or delivered. Any notice, letter or other communication directed to the Contractor and delivered to such address, or sealed in a post-paid wrapper and deposited in any post office box regularly maintained by the United States Postal Service, shall be deemed sufficient service thereof upon the Contractor. Said address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Executive Director's designee. Nothing herein contained shall be deemed to preclude or render inoperative personal delivery of any notice, letter or other communication, written or oral, to the Contractor. Whenever it shall be necessary or required to prove the delivery of any notice, an affidavit describing such delivery shall be conclusive evidence of such delivery.

17. Amendments and Waivers

A. This Agreement may be amended by a written Instrument signed by an authorized officer for the Contractor, and by the Chair or his/her designee. No amendment materially affecting the substance hereof shall be effective unless approved by a Resolution of the BERS Board of Trustees, and a copy of said Resolution is attached to the amendment and incorporated herein.

B. No waiver by BERS of any terms or condition hereof shall be effective unless in writing and signed by the Chair or his/her designee. Any waiver shall be specifically limited to its terms, and shall not be deemed applicable to subsequent like circumstances.

C. Any purported oral amendment or waiver shall be void.

18. Suspension of Deliveries

The Executive Director or his designee, may postpone, delay, or suspend the delivery of the goods or services, or any part thereof, without additional compensation to the Contractor. In such event, (A) the time established for performance by the Contractor of any duty during the term of this Agreement may, at the Contractor's option, be extended for the number of days the Contractor was delayed by said suspension, postponement, or delay provided the term is not

thereby extended; however, (B) the term may, at BERS' option, be extended for the number of days the contractor was delayed by said suspension, postponement or delay.

19. Cancellation

A. If the Contractor violates any provision of this Agreement, the Executive Director or his designee may pursue any legal or equitable remedies available to BERS. In addition, the Executive Director or his designee may seek to have the Contractor declared in default by the Evaluation Committee. In the event that the Contractor is declared in default, BERS may cancel this Agreement and shall thereafter be relieved of all liability hereunder. Upon a finding of default in violation of this contract, the Contractor shall be deemed not responsible and disqualified from bidding for a period of four years, unless in such finding of default, a lesser penalty is imposed by reason of mitigating circumstances.

B. In the event of breach of this Agreement by the Contractor, the Contractor shall have thirty (30) days time to cure the breach before being in default. BERS shall have the right to cancel and terminate said Agreement, and the Contractor shall be liable to BERS for any additional cost of completion of the within services, BERS' other cost in connection with the termination, reletting and completion of the services. All such costs, along with any liquidated damages for delay provided herein, may be assessed by BERS against the Contractor and deducted by BERS from payment to be made to the Contractor under this or any other Agreement at any time between the Contractor and BERS or the City. In the event that said cost exceed all sums owed at the termination date of the Agreement, the Contractor shall pay the amount of such excess to BERS upon notice from BERS of said amount, and in the event that said costs and liquidated damages are less than the sum payable under this Agreement, as if same had been completed by the Contractor, the Contractor shall forfeit all claims to the difference to BERS. If BERS undertakes to secure the services or any part thereof under this section of the Agreement, the certificate of the Executive Director or his designee indicating the amount of services secured, the cost and excess cost, if any, of completing this Agreement, and the amount of liquidated damages hereunder, shall be conclusive and binding upon the Contractor, its assigns and all other claimants.

20. BERS Determination

The Executive Director or his designee shall in all cases determine the acceptability of the labor, materials, or services which are delivered pursuant to this Agreement, including but not limited to their quality, delivery, and condition, and shall in all cases decide every question which may arise relative to the performance of this Agreement. The Contractor may not rely upon, and BERS shall not be bound by, any explanations, determinations or other statements by or from BERS which are not in writing and signed by the Executive Director or his designee.

21. Investigations

A. The Contractor agrees 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 governmental agency which is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or 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, 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;

(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 governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, permit, contract, or license entered into with the City, the State, or any political subdivision thereof, or any local development corporation within the City, then;

C. (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 may convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination to paragraph E below without the City and BERS incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

I. The disqualification for a period not to exceed five (5) years from the date of the 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 obtaining any contract, lease, permit or license with or from the City or BERS; and /or

II. The cancellation or termination of any and all such existing City and BERS contracts, leases, permits or license 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 and BERS 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 Board.

E. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraph I and II below. He or she may also consider, if relevant and appropriate, the criteria established in paragraph III and IV below in addition to any other information which may be relevant and appropriate:

I. 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.

II. The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

III. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with city and BERS.

IV. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in paragraph C, part I above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. The term "license" and "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

The term "entity" as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, licenses, leases or permits from or through the City or BERS or otherwise transacts business with the City or BERS.

The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

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

22. Reports, Inspection and Records

A. The Contractor shall promptly provide all reports required by BERS, including without limitation, financial, program, statistical, analytical, narrative and progress reports. Unless otherwise provided herein, the final payment hereunder shall not be made until all reports have been submitted and approved by BERS.

B. The Contractor shall, until six (6) years after completion of its services hereunder or six years after date of termination of this Agreement, whichever is later, maintain and retain complete and correct books and records relating to all aspects of the Contractor's obligation hereunder. Records must be maintained separately, so as to identify clearly the hours charged to this Agreement and be distinguishable from all other hours charged which are not related to this Agreement.

C. The Contractor shall make its staff, and premises, books, records, operations, and services provided under this Agreement, and those of its subcontractors, available to BERS and to any person, agency or entity designated by BERS, at any time, for program audit, fiscal audit, inspection, observation, sampling, visitation and evaluation, and shall render all assistance and cooperation for said purposes. The Contractor agrees to attend, upon demand, any investigation conducted by BERS to produce any records and other documents required by BERS at that investigation, to cooperate with BERS, and to give sworn testimony pertaining to those documents or the subject of the investigation; provided only that the investigation, testimony, records and documents relate to the subject of the Contractor's relationship with BERS. If a corporation, partnership or government agency, the Contractor agrees to require its officers, employees and partners to comply with the foregoing.

D. In its' record keeping the Contractor shall also comply with all federal, state and local laws and regulations pertaining to such records, including, without limitation, the regulations of the Comptroller, and shall require its subordinates to do likewise.

E. In the event that any federal, state or local government agency, or other public or private agency conducts an audit of any of the Contractor's operations which pertains directly or indirectly to the goods and services provided pursuant to this Agreement, within five (5) working days after the receipt by the Contractor of notice of the commencement of such audit, the Contractor shall give notice of such commencement to BERS; and within five (5) working days after receipt by the Contractor of a copy of any resulting interim or financial audit report, the Contractor shall supply on copy thereof to BERS.

23. Non-Assignment Of Contract

The Contractor shall give its personal attention to the faithful performance of this Agreement. The Contractor covenants that it will not assign, transfer, convey, sublet or otherwise dispose of this Agreement or its right, title or interest therein or its power to execute such Agreement, to any other person or corporation without the previous written consent of the Executive Director or his designee. If the Contractor in any way violates the terms of this provision, BERS shall have the right to cancel and terminate this Agreement, and BERS shall thereon be relieved from all liability thereunder. Nothing contained herein shall be construed to effect an assignment by the Contractor for the benefit of its creditors made pursuant to the statutes of the State of New York. No right under this Agreement, or to any monies due to become due hereunder, shall be asserted against BERS or the City in law or in equity by reason of a purported assignment of this Agreement, or any part thereof, or any monies due or to become due hereunder, unless authorized as aforesaid.

24. Contractor's Staff

The Contractor shall employ or contract for the service of only competent workmen, consultants, independent contractors and other employees as are, or reasonably may be, necessary for the performance of the Services hereunder.

The Contractor warrants that it shall be solely responsible for its employees' work, direction, safety and compensation.

The Contractor agrees to replace immediately any employee, and not engage such employee in the performance of this Agreement, if the Contractor is notified in writing that, in the opinion of either the Executive Director, or his designee, such employee is incompetent or otherwise impedes the performance of the services hereunder.

25. Confidentiality Of Records

All personally identifiable member and staff information obtained by or furnished to the Contractor by BERS, and all reports and studies containing such information prepared or assembled by the Contractor, are to be kept strictly confidential by the Contractor and shall not be provided or disclosed to any third party without the express written permission of the Executive Director or his designee. The Contractor shall limit access to such material in its control to those of its employees performing services pursuant to this Agreement strictly on a need to know basis. The Contractor shall restrict its use of the information to its performance under this Agreement and shall return all such material to BERS upon the completion of the services herein.

26. Testimony

If the project which is the subject matter of this Agreement at any time becomes involved in a proceeding, to which BERS or the City is a party, before any court, board, tribunal, panel, arbitrator, referee or agency, the Contractor shall provide such knowledgeable witnesses as BERS shall require, free of additional compensation of any kind. Nothing herein shall require the Contractor to provide testimony in any proceeding in which it is a party with interests opposed to those of BERS.

27. No Personal Liability

Neither the members of BERS nor the Executive Director nor any officer, employee, agent or representative of BERS or of the City shall be personally liable, based upon any theory of law or equity, to the Contractor or to any party claiming on behalf of or through the Contractor, under this Agreement, or by reason of any individual's actions or failure to act in any way connected with this Agreement, whether or not the action shall have been within or without an individual's scope of authority. The scope of this provision includes personal injury to any personal interest (commercial or otherwise), physical injury (including death), property damages, and any pecuniary damages where such injuries or damages result from or arise out of negligence. The Contractor further waives any and all rights to make a claim or commence an action or special proceeding, in law or equity, against any of the aforementioned individuals, and the Contractor hereby assigns its complete right, title, and interest in any such claim, action, or special proceeding to BERS.

28. Conflict Of Interest

A. Except in accordance with applicable provisions of law and regulations governing such conduct, the Contractor may not have on its Board of Directors (or comparable body), employ, or contract for the services of I) any present employee of BERS, or II) any person who is presently on leave from employment with BERS, or III) any former employee of BERS.

B. The Contractor warrants that, other than a bona fide employee or contractor regularly working as a sales representative for the Contractor, no person, selling agency, or other entity has solicited or secured this Agreement, or has been employed or retained to do so, for a commission, percentage, brokerage fee or contingent fee.

C. The Contractor shall not give, and warrants that it has not given or promised to give, any gift or thing of value to any officer, employee or other person whose salary is payable in whole or part from BERS or City funds, or other funds under this Agreement. The phrase "gift or thing of value" shall include, without limitation, money, tangible goods, services, loans, promises or negotiable instruments.

D. If the Contractor violates any provision of this paragraph, BERS may, at its option, I) cancel and terminate this Agreement and be relieved of all liability hereunder, II) deduct all amounts paid by the Contractor or other value given by the Contractor in violation of this paragraph, from payments made or to be made to the Contractor under this or any other Agreement at any time, III) require the refund of any funds paid hereunder, or IV) any combination of the foregoing. Any breach of the warranties or violation of the provisions of this paragraph shall be grounds to preclude the Contractor or its principals as a responsible bidder on other BERS or City contractors.

29. Antitrust

The Contractor assigns to BERS its right, title and interest in and to any claim or cause of action arising under the antitrust laws of New York State or the United States relating to the goods or Services purchased or procured by BERS pursuant to this Agreement.

30. Merger and Choice Of Law

This written Agreement constitutes the entire agreement of the parties, and not other prior or contemporaneous agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto, or to vary any of the terms contained herein. This agreement shall be governed and construed in accordance with the laws of the State of New York without regard to its conflict of law rules.

31. Participation In An International Boycott

A. The Contractor agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States that the Contractor or a substantially-owned affiliated company thereof, participated, or is participating, in an international boycotting violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Executive Director or his designee may, at his option, render forfeit and void this contract.

32. No Discrimination

A. Compliance: the Contractor, and all of the Contractor's employees, will strictly comply with all applicable Federal, State and local laws pertaining to the subject of discrimination and harassment on any protected ground, as they may now read or as they may hereafter be amended.

B. The Contractor is, and will remain, an Equal Opportunity Employer. In addition to the other requirements of this paragraph 32, the

Contractor shall provide employment opportunities for all qualified persons, without regard to race, color, creed, ethnicity, national origin, alienage, citizenship status, age, marital status, partnership status, disability, sexual orientation, gender (sex), military status, prior record or arrest or conviction (except as permitted by law), predisposing genetic characteristics, or status as a victim of domestic violence, sexual offenses and stalking. Furthermore, the Contractor will maintain an environment free of harassment on the above-referenced protected categories.

C. Pursuant to the provisions of the New York State Labor Law, the Contractor agrees, in its operations performed within the State of New York:

I. That in the hiring of employees for the performance of work under this contract hereunder, neither the contractor, nor any person acting on behalf of such contractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;

II. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin;

III. That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

IV That this contract may be canceled or terminated by the state or municipality, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract;

V. 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; and

VI. That BERS is, for purposes of this subparagraph C., a "state or municipality."

33. Equal Employment Opportunity Requirements For Professional Contractors

A. Definition of Terms for the Implementation of a Program of Affirmative Action.

The following terms, when used in this paragraph, shall have the meanings given for them

I. "Employee": Any person employed full or part-time in any capacity by the Contractor or sub-contractor.

II. "Minorities and Women": Blacks, Hispanics, Asian or Pacific Islanders, Native Americans, and females.

III. "Affirmative Action Program": an affirmative action program is a management tool designed to ensure equal employment opportunity. The Contractor will submit a detailed written Affirmative Action Plan which, when implemented with the Equal Employment Opportunity Policy herein, ensures an

identification of problem areas, an analysis of workforce utilization, and the implementation of good faith efforts to address any instances of underutilization for minorities and women at all levels and in all segments of the Contractor's work force. A sample compliant Affirmative Action Plan will be provided to all Contractors.

An effective Affirmative Action Program shall include, but is not limited to, the following elements:

1. Designation of responsibility for implementation: an employee of the Contractor is responsible for implementing the Affirmative Action Program;
2. The identification of problem areas: this includes an analysis of the Contractor's workforce to identify underutilization for minorities and females, the establishment of placement goals where underutilization is identified, and a survey of other areas of the workforce that may impact the Plan.
3. Action oriented programs: this segment discusses outreach efforts. If there is underutilization for minorities and women, this section will include specific and practical steps (such as good faith efforts) to address the underutilization. This includes corrective actions taken, or to be taken, toward the elimination of any employment policy or practice having a discriminatory effect on minorities and women;
4. Internal audit and report systems: conduct an analysis of the Contractor's personnel activity data;
5. Development or reaffirmation of the Contractor's Equal Opportunity Policy and dissemination of the Policy;
6. Development or reaffirmation of the Contractor's Sex Discrimination and Religious and National Origin Discrimination policies; and
7. Adoption of affirmative action plan for individuals with disabilities and for covered veterans.

IV. "Placement Goals": used to measure progress towards achieving equal employment opportunity in an affirmative action program. Placement goals are annual targets that are reasonably attainable by applying good faith efforts (such as outreach). If there is underutilization for a particular job group or job title, then a placement goal will be set. The placement goal is equal to the availability figure for minorities or females in the geographic area the Contractor would use to find workers to fill positions in the job group or job title. Placement goals do not represent quotas and should never operate as quotas.

V. "Underutilization": Having fewer minorities or women in a particular job group or job title than would reasonably be expected by their availability in the geographic area the Contractor would seek workers to fill positions within the job group.

VI. "OEO": The Office of Equal Opportunity of BERS.

VII. "Director": The Executive Director of BERS.

B. Required Affirmative Action Program

I. The Contractor is required to identify and eliminate overt and covert discriminatory practices and implement the Affirmative Action Program. Upon OEO's demand, the Contractor will have ten (10) business days to submit to OEO a detailed written Affirmative Action Program (hereinafter referred to as an "AAP"). If the Contractor cannot submit an AAP within ten business days, the Contractor must immediately contact OEO to request an extension. If granted, the extension deadline must be adhered to by the Contractor. In the event the Contractor submits an AAP that is not acceptable, OEO will require the submission of a revised AAP that complies with OEO's standards and the terms and conditions herein. The revised AAP must be submitted by the deadline established by OEO.

II. In the event the Contractor fails to submit such an acceptable AAP within the time specified by OEO's demand, OEO has the authority to declare the Contractor as being in default.

III. The Director shall be the sole judge of the AAP's acceptability. The AAP shall:

- a. Apply to all Board of Education professional services contracts with the Contractor;
- b. Encompass all phases of the employment process, including evaluation of job classification to ensure job relatedness, recruitment, selection, validity of examinations, retention, layoffs, seniority, assignments, training, promotion, salary and benefits;
- c. Fulfill the following requirements:
 - i. Adhere to all the requirements of the OEO paragraphs herein;
 - ii. Include measurable goals, reasonable timetables, and specific programs to be implemented by the contractor to identify deficiencies in employment practices with resulting in the underutilization of minorities and females;
 - iii. Include the submission of a completed Workforce Profile Form, provided by OEO, which represents the present utilization of minorities and women in the Contractor's work force. This Form will also include the salary range for each job title or job group;
 - iv. Include all of the Contractor's facilities within the continental limits of the United States. If the Contractor wishes to request a variance from this requirement, the Contractor must contact OEO immediately. Variances regarding the specific regions covered by the AAP will be granted at OEO's discretion;
 - v. Specify the union(s) or other employee organizations to which the Contractor's employees belong, and shall include commitments to good faith efforts to effect Equal Opportunity changes directly or indirectly, in programs by such unions or organizations to recruit, train, qualify or otherwise select members, if such changes are deemed necessary. The AAP shall also include a copy of any agreement with an employee association which affects employment policies and practices;
 - vii. Be submitted in such format as shall be specified by the Director ;

C. Implementation of AAP

During the Term of the Contract, the Contractor shall successfully implement the AAP approved by OEO.

If OEO determines that the Contractor breached any of the requirements of the OEO paragraphs herein, OEO will seek to have the Contractor declared in default by the Chancellor's designee as provided elsewhere herein.

For further information concerning these rules, regulations or procedures, contractors may consult with the Office of Equal Opportunity of BERS.

34. MacBride Principles Provisions for Board of Education Contractors

ARTICLE I. MACBRIDE PRINCIPLES PART A

In accordance with section 6-115.1 of the Administrative Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contract either 1) have no business operations in Northern Ireland, or 2) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

PART B

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

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

- a. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- b. 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;
- c. ban provocative religious or political emblems from the workplace;
- d. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- e. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- f. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- g. 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;

- h. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- i. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE II. ENFORCEMENT OF ARTICLE I.

The Contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of 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.

35. Non-Collusive Bidding

If this Agreement was awarded by BERS based upon the submission of bids or proposals, Contractor warrants under penalty of perjury, that its bid or price quotation was arrived at independently and without collusion aimed at restricting competition.

36. Set-Off Rights

The BERS shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Board's option to withhold for the purposes of set-off any moneys due and owing to the BERS with regard to this agreement, any other agreement with the BERS, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the Board for any other reason. The BERS shall exercise its set-off rights in accordance with normal BERS practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the BERS, its representatives, or the State or City Comptroller.

37. Fair and Ethical Business Practices

Fair and Ethical Business Practices shall be strictly adhered to during the term of this Agreement. During the term of this Agreement, Contractor shall not:

- A. File with a government office or employee, a written instrument which intentionally contains a false statement or false information;
- B. Intentionally falsify business records;

C. Give, or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official or public servant;

D. Give or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant for any reason;

E. Give, or offer to give, money, gifts or other benefit(s) to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices;

F. Knowingly participate in the criminal activities of any organized crime group, syndicate or "family," nor shall any person employed by or associated with any such organized crime "family," syndicate or group participate through criminal means in any of the business affairs of Contractor.

38. Indemnification

The Contractor shall defend, indemnify and hold BERS and the City harmless from and against any and all claims, suits, damages, judgments, liabilities, costs, and expenses, including reasonable attorneys' fees, to which they may be subject because of or related to any claim that the Copyrightable Materials or their use constitutes an infringement by the Contractor or a violation by the Contractor of the copyright, patent, trademark, or any other property or personal right of any third party. For the purposes of this provision, "Copyrightable Materials" shall include any reports, documents, data, photographs, software, and/or other materials provided pursuant to this agreement, regardless of whether the copyright in such materials is or shall be owned by BERS, the Contractor, or third parties. This indemnification shall survive the termination or expiration of this Agreement. This indemnification provision shall not be limited in any way by the Contractor's obligations to obtain insurance as provided under this Agreement. Furthermore, Contractor shall defend and settle at its sole expense all suits or proceedings brought against Contractor arising out of the foregoing. However, in cases involving software, no such settlement shall be made that prevents BERS from continuing to use the software without BERS' prior written consent, which consent shall not be withheld unreasonably.

39. Notice to Bidders, Proposers, Contractors, and Contract Renewers

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of \$100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act ("WPEA"), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local Law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

40. NYC Earned Safe and Sick Time Act Contract Rider

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).

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

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.

1. An employee who works within the City must be provided paid safe and sick time^[2]. Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

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

- a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
- b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- c. closure of such employee's place of business by order of a public official due to a public health emergency;
- d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or
- e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:
 - 1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

^[2] Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

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

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

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);
2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;
3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;
4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at

<https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

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

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

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

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