



**NEW YORK CITY DEPARTMENT OF EDUCATION
DIVISION OF SCHOOL FACILITIES**

CONTRACT NO. 1

FORM OMO/93

Amended February 6, 2004

**OPEN MARKET ORDER
FORM OF CONTRACT**

TO PROVIDE LABOR AND MATERIALS

FOR MAINTENANCE, REPAIR WORK, ETC.

INVOLVING A CONTRACT AWARD OF NOT MORE THAN \$50,000

**CONTRACT NO. 1
FORM OMO/93**

TABLE OF CONTENTS

	<u>Page</u>
Article 1. Definitions.....	1
Article 2. Examination of Contract Documents by Prospective Bidders	1
Article 3. Qualification of Bidder.....	2
Article 4. Condition Precedent to Issuance of a Purchase Order	2
Article 5. Scope	3
Article 6. Non-Assignment of Purchase Order Without Written Consent of the Board.....	3
Article 7. Inspection	3
Article 7A. Poor Performance Provision.....	3
Article 8. Interpretation	4
Article 9. Bills, Payments	4
Article 10. Non-Interference with School Activities.....	5
Article 11. Security-Contractor Employee Identification	5
Article 12. Actions.....	5
Article 13. Patent Rights, Infringements	5
Article 14. Prevention of Accidents	5
Article 15. Indemnification	5
Article 16. Risk of Loss.....	6
Article 17. Other Work.....	6
Article 18. Extra Work and Omitted Work	6
Article 19. Liquidated Damages for Certain Non-Conforming Work.....	6
Article 20. Withdrawal of Bid (No Award Made within Forty-Five (45) Days of Bid Opening).....	6
Article 21. Withdrawal of Bid (Bidder Mistake Discovered After Bid Opening)	6
Article 22. Labor Law Requirements; Working Conditions; Prevailing Rate of Wages; Minimum Wage.....	7
Article 23. Insurance	8
Article 24. Workers' Compensation	9
Article 25. Prevention of Delay.....	9
Article 26. Time of Beginning and Completing the Work	9
Article 27. Default of Contract.....	9
Article 28. Cancellation of Contract.....	9
Article 29. Notices to Contractors	10
Article 30. No Estoppel	10
Article 31. Acceptance of Payment	10
Article 32. Sub-contracting of Work	11
Article 33. Asbestos Regulations	11
Article 34. Locally Based Enterprise (LBE) Program.....	11
Article 35. MacBride Principles	12

CONTRACT between the Board of Education of the City School District of the City of New York (hereinafter, "Board") and the Contractor for labor and materials for maintenance, repair work, etc., in the New York City Public Schools.

WITNESSETH

The parties hereto agree as follows:

ARTICLE 1: DEFINITIONS

Wherever the following words, names or titles appear in this contract, they shall have the following meanings:

- A. "Board" means the Board of Education of the City School District of the City of New York.
- B. "Contractor" means the individual, firm etc., approved by the Board as an eligible contractor for labor and materials for maintenance, repair work, etc.
- C. "City" means The City of New York.
- D. "DSF" means the Division of School Facilities of the Board.
- E. "Comptroller" means the Comptroller of the City.
- F. "Chief Executive, Office of School Support Services ", "Senior Director, Division of School Facilities" and "Inspector" mean duly authorized officers and employees of the Board occupying said positions who administer this Contract and/or inspect the work for acceptance and payment.
- G. "Approved", "required", "directed", "specified", "designated", or "deemed necessary" unless otherwise expressed, mean approved, required, directed, specified, designated, or deemed necessary, as the case may be, by the Senior Director, Division of School Facilities.
- H. "Drawings" mean 1. the contract drawings of the work to be performed hereunder; 2. all detail drawings furnished by DSF supplemental thereto and 3. such supplemental detail drawings or shop drawings from specified manufacturer, as the specifications may require the Contractor to furnish, when same have been duly approved by the Senior Director, Division of School Facilities, or his designee.
- I. "Specifications" mean the "Schedule Specification" and the applicable "Standard Specification" and the amendments thereto, and all the written directions and requirements applying to the work as herein detailed and referred to as specifications. "Schedule Specification" and "Standard Specification" are documents issued by the Board which are incorporated herein by this reference and made a part hereof.
- J. "Work" or "Works" mean all labor, materials, equipment and tools agreed to be furnished or performed by the Contractor pursuant to this Contract.
- K. "Materials" mean all material of any kind, nature and class as may be specified, which becomes a part of, or is used in the performance of the work, including all manufactured or prepared materials, articles, accessories, appliances, and other parts used.
- L. "Purchase Order" means the written notice of award of contract mailed to the Contractor which 1. accepts the Contractor's bid proposal as set forth in Bid Form No. 1, and 2. assigns a Contract Number for the specification bid upon as of the date of issuance.

ARTICLE 2: EXAMINATION OF CONTRACT DOCUMENTS BY PROSPECTIVE BIDDERS

Bidders shall be required to examine the contract drawings, if any, all specifications and this Contract document in order to make a determination as to the quantity of the work, and their obligations concerning its satisfactory and timely completion. Bidders shall make personal examination of the locations of the proposed work and the surroundings thereof, so as to assure accuracy of their estimate of the quantity of the work and the relative difficulty attending its performance and completion at the site(s) where it is to be performed. No bidder shall at any time, dispute or complain about the quantity of work required, nor of the difficulties encountered, nor assert that there was any misunderstanding in regard to the quantity or quality or kind of materials to be furnished or work to be performed. If any person, firm, etc., contemplating submission of a bid for award of the proposed contract is in doubt as to the true meaning, or believes that there is an error, discrepancy, inconsistency, indefiniteness of description, or any impossibility of performance, contained in the specifications or other proposed contract documents, he/she/it shall submit to the Senior Director, Division of School Facilities, at least five (5) days before the bid opening date, a written request for further explanation or interpretation thereof. The

person or party submitting the request assumes the responsibility for prompt any part of the contract drawings, delivery to said Senior Director. Any and all explanations and interpretations, and any supplemental instructions will, if issued, be in the form of written addenda to the specifications and will be posted in the bid room at 44-36 Vernon Boulevard, Long Island City, N.Y. 11101, 5th floor, and mailed to all prospective bidders (at the respective addresses furnished for such purposes) not later than three (3) days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addenda by mail shall not relieve the bidder from any obligation under his bid as submitted, where such bid is not withdrawn as provided herein. All addenda so issued shall become part of the contract.

ARTICLE 3: QUALIFICATION OF BIDDER

A. Before any award of contract is made, the lowest numerical bidder will be required to submit documentation, including a "Contractor's Application for Registration as A Responsible and Eligible Bidder", satisfactory to the Chief Executive, Office of School Support Services, or his designee, evidencing the following:

1. A business history in the same or a related construction or building maintenance field for at least one year prior to the bid opening date.

Any additional or enhanced bidder qualifications that are specified in the "Schedule Specification" shall be deemed to amend the provisions of this Article.

2. The skill and experience, as well as the necessary facilities, organization and demonstrated reliability to do the work in the trade(s) for which qualification is sought, within the time period specified in the bid documents.
3. Financial capability to perform the project. As part of the qualification documentation, the contractor shall be required to submit a Certification from a Certified Public Accountant (C.P.A.) or a Licensed Public Accountant in conformance with such guidelines as shall be established by the Contractors Qualification Section of DSF.
4. Satisfactorily performed to final completion, a minimum of five contracts of a similar type and nature in the trade(s) for which qualification is sought. The monetary value of the five contracts shall be as follows:
 - a) At least one contract valued at \$25,000 or more.
 - b) At least two contracts valued at \$15,000 or more.
 - c) At least two contracts valued at \$5,000 or more.

Any additional or enhanced bidder qualifications that are specified in the "Schedule Specification" shall be deemed to amend the provisions of this Article.

Note 1: The term "he": and "bidder" as used in this article shall apply to the firm or corporation, which shall include the principal or executive or "responsible person" or supervisor-in-charge in active control of such firm or work, or person who, either individually or as a principal or executive of the firm or corporation, has satisfactorily completed the contract(s).

Note 2: Documentation evidencing satisfaction of the foregoing qualifications must be provided to the Chief Executive, Office of School Support Services or his/her designee. The adequacy of such documentation shall be within the discretion of the Chief Executive, Office of School Support Services whose determination shall be final, binding and conclusive upon the bidder.

Note 3: The requirements stated in this article supersede those listed in the Contractor's Application for Registration as a Responsible and Eligible Bidder, Part 1, paragraph (c).

ARTICLE 4: CONDITION PRECEDENT TO ISSUANCE OF A PURCHASE ORDER

It shall be a condition precedent to issuance of any purchase order hereunder that the Board approve the Contractor's Application For Registration As A Responsible and Eligible Bidder (hereinafter, "Qualification Statement"), which approval shall be in effect for a period of one (1) year. A low numerical bidder's failure to submit an original or updated Qualification Statement within ten (10) days after a demand for same from the Board may result in the bidder's being declared not the lowest responsible bidder.

ARTICLE 5: SCOPE

The Contractor shall furnish and provide to the satisfaction of the Board all the work, materials, labor, scaffolding, tools, implements, molds, models and cartage, described herein and/or necessary to perform and furnish such work and materials in a first-class workmanlike manner, to industry accepted standards and to conform strictly to the specifications, drawings and addenda thereto, if any, and to complete same perfect in every respect on or before the completion date stated in the specifications, to the satisfaction of the Chief Executive or his/her designee for the sum agreed to and stated in the purchase order issued by DSF.

ARTICLE 6: NON-ASSIGNMENT OF PURCHASE ORDER WITHOUT THE WRITTEN CONSENT OF THE BOARD

- A. The Contractor will give its personal attention to the faithful performance of all work ordered; it will not assign, transfer, convey, sublet, or otherwise dispose of its right, title, or interest in or to the Contract, or any part thereof, without the previous consent of the Director, Office of Administration, endorsed upon the written purchase order for the work, and will not assign by Power of Attorney, or otherwise, any of the monies to become due and payable under this Contract. If the Contractor shall, without such previous written consent, assign, transfer, convey, sublet, or otherwise dispose of the work ordered, or his right, title, or interest therein to any person, firm or corporation, or assign any of the monies due under any purchase order issued by DSF, the purchase order for same may be canceled and terminated by DSF and the Board shall thereupon be relieved of all liabilities and obligations to the Contractor growing out of such purchase order, or to his assignee or transferee.
- B. Nothing herein shall be deemed to hinder, prevent, or affect any assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York, or of subcontracting part of the work of this Contract pursuant to Article 31 hereof.

ARTICLE 7: INSPECTION

- A. The work and materials required to be performed and furnished by the Contractor shall at all times be subject to the inspection by DSF personnel. Inspectors are authorized and empowered to reject and refuse acceptance of any part of the work if, in the opinion of the Inspector, same does not comply in kind, quality, size, number, weight, or in time or place of delivery, with the specifications. Inspectors may condemn or reject any part of the work or materials found to be improperly performed or furnished under any purchase order, and direct same to be taken down and removed, and for other, proper work and materials to be provided in place thereof at the sole expense of the Contractor.
- B. All work of this Contract is subject to review by the Board's Quality Assurance Unit and the Comptroller of the City, or his/her designee, which are authorized as above to reject and refuse any part if the work is not compliant with the specifications.

ARTICLE 7A: POOR PERFORMANCE PROVISION

MID-POINT AND FINAL EVALUATIONS

Mid-Point Evaluation

The performance by the Contractor of the specifications, scope of work etc., of this contract will be evaluated on behalf of the Board by the Field Inspector assigned to monitor the project. All projects will be evaluated at project mid-point, and at final completion (punch list items completed) or at the time the Contractor was required to finally complete the project. An unsatisfactory or marginal rating on the written evaluation form will be submitted to the Contractor for response.

If, after reviewing the Contractor's response (if any) to an unsatisfactory or marginal rating on the written evaluation form, it is the judgment of the Field Inspector's supervisor that the Contractor's performance is not in compliance with the requirements of the contract, he/she will issue a written "Warning of Poor Performance" to the Contractor.

Final Evaluation

Within thirty (30) days after final completion of the work or the time within which the Contractor was required to finally complete the work, performance by the Contractor of the specifications, scope of work etc., of this contract will be evaluated on behalf of the Board by the Field Inspector assigned to monitor the project. An unsatisfactory or marginal rating on the written evaluation form will be submitted to the Contractor for response.

If, after reviewing the response (if any) to an unsatisfactory or marginal rating, it is the judgment of the Field Inspector's supervisor that the Contractor's performance is not in compliance with the requirements of the contract, he/she shall advise the Board's Chief Executive for the Office of School Support Services of such fact,

with recommendations.

If, after his/her review of the evaluation(s) and recommendation(s) of the Field Inspector and his/her supervisor, and the response, if any, of the Contractor, it shall be the determination of the Chief Executive that the Contractor's performance is not in compliance with the requirements of the contract, he/she shall advise the Contractor in writing that it has been determined to be a Poor Performer, and will be barred from bidding for a period of up to two (2) years from the Contractor's receipt of notice of the determination.

Notwithstanding any other provision of this contract, a project having reached substantial completion shall not affect the operation of this provision, i.e., the Contractor may achieve substantial completion and be determined a poor performer hereunder.

The Contractor shall have the right to appeal the determination of the Chief Executive that it is a Poor Performer at a hearing before the a person or persons designated by the Chancellor. The Contractor must request this hearing within five (5) business days of receiving the Determination of Poor Performance from the Chief Executive.

The opportunity for the Contractor to appeal the Determination of Poor Performance to the Chancellor's Designee should be made with the understanding that the following result(s) may occur:

- a. If the Chancellor' Designee accepts the Contractor's appeal and agrees with the Contractor, the Determination of Poor Performance will be rescinded.
- b. If the Chancellor's Designee agrees with the Chief Executive's determination, it will issue a Chancellor's Designee decision that may, consistent with the Bylaws of the Board of Education, bar the Contractor from bidding for a period of up to two (2) years, unless in connection with its findings, a lesser penalty is imposed by reason of mitigating circumstances.

ARTICLE 8: INTERPRETATION

To prevent all disputes and litigation, DSF shall in all cases determine the amount, quality, acceptability and fitness of the several kinds of work and materials performed and delivered and shall determine all questions in relation to the work and the methods to be adopted, and determine every question which may arise relative to the fulfillment of the Contract and its estimate and decision shall be final, binding and conclusive upon the Contractor.

ARTICLE 9: BILLS, PAYMENTS

- A. The Contractor shall not be entitled to demand or receive payment for any work done or materials furnished pursuant to any purchase order, until: 1. each and every one of the stipulations herein contained are complied with; 2. the work called for in the applicable purchase order shall have been fully performed and finished, complete and perfect in every respect, in accordance with the specifications, to the satisfaction of DSF, and 3. all damages have been paid, allowances made, deductions taken and monies retained in accordance with the terms of the purchase order and this Contract of which it forms a part.
- B. Contractor shall be required to complete the specified work within the time stated in the specifications. If such time shall be a period of less than ninety (90) days, a single payment will be made at completion of the work.
- C. For work for which a period of ninety (90) days or more is allowed for completion, one progress payment will be allowed when fifty percent (50%) of the materials and labor are actually completed and installed, followed by a second payment at the completion of the work. No payments will be considered or approved for stored material or equipment which has not been installed.
- D. All payments must be entered upon DSF payment requisitions which shall be accompanied by weekly payroll reports certified as true and accurate by the Contractor.
- E. All payments shall be subject to audit by the Board's Quality Assurance Unit.

ARTICLE 10: NON-INTERFERENCE WITH SCHOOL ACTIVITIES

The Contractor shall carry on the work in such time and in such manner as will least interfere with school activities. Where work involved is in active classrooms etc., it may be performed before or after school hours or

on weekends as directed by the Chief Regional Manager of the Inspection Unit, without any change to the contract cost.

ARTICLE 11: SECURITY - CONTRACTOR EMPLOYEE IDENTIFICATION

The contractor shall provide photo identification badges for all his employees, and, in addition, require that any and all sub-contractors provide same for their employees.

The badges are to be worn on outer clothing and be conspicuously displayed at all times while present on Board of Education premises.

The badge is to include the Contractor's name, the employee's name, social security number, date of birth, height and weight along with a photograph of the employee.

The Contractor is hereby notified that any employee of the Board of Education shall have the right to inspect the badge. If the Contractor's employee refuses to display or produce a badge for examination, the Chief Manager of Inspection Unit shall be notified, and the Contractor may be directed to remove his employee from the premises until such time as he is able or willing to produce his badge.

ARTICLE 12: ACTIONS

Notwithstanding any provision of law to the contrary, no action shall lie or be maintained against the Board upon any claim based upon this contract or any purchase order issued pursuant to this contract, or out of anything done in connection with any such purchase order, unless such action shall have been commenced within six (6) months after the date of acceptance of the work under any purchase order, or if the purchase order has been terminated or the Contractor declared in default by the Chancellor's Designee as provided for in this contract, within six (6) months from the date of such termination or declaration of default.

ARTICLE 13: PATENT RIGHTS, INFRINGEMENTS

The Contractor shall be responsible to the Board for any claims or suits against the Board for any infringement of any patent rights connected with any and all materials, appliances, articles, or systems, used in the performance of this work, and shall defend, indemnify and hold harmless the Board against any such claims or suits which may be brought before or after the completion of any work ordered. Whenever any article or class of material is specified by trade name, or the name of any particular patentee, manufacturer, or dealer, or by reference to the catalog of any such manufacturer or dealer, it shall be taken as intended to mean and specify the articles or materials described, or any other equal thereto in quality, finish and durability, and equally as serviceable for the purpose for which it is intended, as may be judged and determined by DSF in advance of installation.

ARTICLE 14: PREVENTION OF ACCIDENTS

The Contractor shall place adequate guards and fences around work areas for the prevention of accidents, and shall put up and keep at night proper lighting wherever necessary to prevent accidents or injuries to the person or property of another.

ARTICLE 15: INDEMNIFICATION

The Contractor shall defend, indemnify and hold harmless the Board and the City from all suits, claims, damages, and costs of every name and description, brought against them and from all damages and costs to which they shall be put, by reason of injury to the person or property of another resulting from negligence or carelessness of the Contractor in the performance of the work, or in guarding same, or from any improper or defective materials, machinery, implements, or appliances used in performance or completion of the work, or from any act or omission of the Contractor and its employees, agents and subcontractors. Any monies due or to become due under this contract or under any contract with the Board or the City, which shall be considered necessary by DSF to satisfy such suits, claims, etc., may, at DSF's option, be retained by the Board until such time as the suits or claims and demands have been settled or otherwise disposed of, and evidence to that effect has been furnished to the satisfaction of DSF.

ARTICLE 16: RISK OF LOSS

All the risk or loss or damage to the work or to any of the materials, paints, tools, implements, appliances or other things used in doing the work under any purchase order, prior to final acceptance, shall be borne by the Contractor. This liability of the Contractor is absolute and not dependent upon any question of negligence on its part or on the

part of its agents, employees or subcontractors, or upon any act or failure to act on the part of the City or the Board.

ARTICLE 17: OTHER WORK

If, before the completion of the work under any purchase order, it shall be deemed necessary by DSF to do other work in or about any building or structure, the Contractor shall not in any way interfere with such other contractor(s) or person(s) as the Board may employ, and will, if necessary, suspend its work, or carry on same in such manner as to afford all reasonable cooperation for doing such other work. No damage or claim by the Contractor shall be allowed for such cooperation, except that an extension of the time for performance of the purchase order as DSF shall deem reasonable, may be granted.

ARTICLE 18: EXTRA WORK AND OMITTED WORK

DSF reserves the right to make changes in the drawings and specifications in a manner not materially affecting the substance of the work. The reasonable value of any work or material required to be omitted shall be deducted from the contract price, and the reasonable value of extra work required to be performed shall be added to the contract price, and DSF shall determine the reasonable value of work or material omitted and/or added to the work by the aforesaid changes.

No change in the specified work shall be made unless the Chief Executive Office of School Support Services or his/her designee has approved same in writing. The combined original contract amount and extra work amount shall in no event exceed the sum of \$50,000.

ARTICLE 19: LIQUIDATED DAMAGES FOR CERTAIN NON-CONFORMING WORK

If, in the opinion of DSF, the Contractor has performed or is performing work not in accordance with the drawings and specifications of the Contract, but it is nevertheless expedient for the Board to accept the work as furnished rather than to remove and replace such non-conforming work, DSF shall deduct a sum from the amount which would have been due the Contractor for work in conformance with the Contract, an amount equal to twice the difference in value between the work as so accepted and the work had it been performed in conformance with the Contract, as liquidated damages, and not by way of penalty. The amount of said difference shall be determined by DSF.

ARTICLE 20: WITHDRAWAL OF BID - WITHOUT PREJUDICE (IF NO AWARD IS MADE WITHIN FORTY-FIVE) (45) DAYS OF BID OPENING)

- A. Prior to issuance of a purchase order, a bidder shall be permitted to withdraw its bid, without prejudice, if more than forty-five (45) days have elapsed between the date of bid opening and the date of issuance of the purchase order. Application for withdrawal must be submitted to the Director, Office of Administration, in writing.
- B. Where a purchase order has been issued subsequent to said forty-five (45) day period, application for withdrawal of bid must be submitted to the Director, Office of Administration, (Attention: Contract Compliance Section, DSF, in writing, within five (5) business days of receipt of the purchase order. Where such application for withdrawal has not been so submitted, the purchase order shall be deemed in full force and effect.

ARTICLE 21: WITHDRAWAL OF BID (IF BID MISTAKE IS DISCOVERED AFTER BID OPENING)

- A. Where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn after a showing of the following: 1. the mistake is known or made known to the Board, prior to the awarding of the contract or within three (3) days after the opening of the bid, whichever period is shorter; and 2. the price bid was based on an error of such magnitude that enforcement would be unconscionable; and 3. the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and 4. the error in the bid is actually due to an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents or materials used in the preparation of the bid sought to be withdrawn; and 5. it is possible to place Board in the same position it was in prior to the bid opening.
- B. Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this provision shall be withdrawal of that bid by the bidder and the return of the bid bond or other security, if any, to the bidder. Thereafter, the Board, may, in its discretion, award the contract to the next lowest bidder or re-bid the contract. Any amendment to or reformation of a bid or contract to rectify such an error or mistake therein, is strictly prohibited.

- C. The request of a bidder for withdrawal of bid by reason of unilateral error or mistake shall be referred to the Chancellor's Designee for decision. The request must be accompanied by a certified check payable to the Board of Education, Administrator of Business Affairs, in the amount of two hundred fifty dollars (\$250). Said fee shall be non-refundable.
- D. A bidder permitted to withdraw may not bid again on the same item or proposals. A request to withdraw from a second bid in any one year shall disqualify a bidder from bidding again in the next twelve (12) months.

ARTICLE 22: LABOR LAW REQUIREMENTS; WORKING CONDITIONS; PREVAILING RATE OF WAGES; MINIMUM WAGE

- A. The Contractor must strictly comply with all applicable provisions of the New York City Administrative Code and the Labor Law of the State of New York. In addition the Contractor shall submit, for it self and for any subcontractor it engages, statements of compliance with the LIVING WAGE LAW of the City of New York.

Hours of Work No laborer, worker or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by this Contract, shall be permitted or required to work more than eight hours in any one calendar day, or more than five days in any one week except in cases of extraordinary emergency when so proclaimed by the President of the United States of America, or in any other case provided by law.

In situations in which there are not sufficient laborers, workers and mechanics who may be employed to carry on expeditiously the work contemplated by this Contract as a result of such restrictions upon the number of hours and days of labor, and the immediate commencement or prosecution or completion without undue delay of the work is necessary for the preservation of the contact site and/or for the protection of the life and limb of the persons using the same, such laborers, workers and mechanics shall be permitted or required to work more than eight hours in any one calendar day, or five days in any one week; provided, however, that upon application of any Contractor, the Chief Executive shall have first certified to the Commissioner of Labor of the State of New York that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Commissioner of labor shall have determined that such an emergency does in fact exist as provided in Subdivision two of Section 220 of the Labor Law.

Failure of the Chief Executive to make such a certification to the Commissioner of Labor shall not entitle the Contractor to damages for delay or for any cause whatsoever.

Working Conditions No part of the work, labor or services shall be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the Contract. Compliance with the safety, sanitary and factory inspection laws of New York State, New York City and Federal Guidelines, shall be prima facie evidence of compliance with this paragraph.

- B. **Prevailing Rate of Wages** The wages to be paid for a legal day's work to laborers, workers or mechanics employed upon the work contemplated by this Contract or upon any materials to be used thereon, shall not be less than the "prevailing rate of wage" as defined in Section 220 and/or Section 230 of the Labor Law of the State of New York, and as fixed by the Comptroller in the attached Schedule of Wage Rates and Supplemental Benefits as amended by any updated schedules thereof. The prevailing wage rates and supplemental benefits to be paid are those amended by any in effect at the time the work is being performed.
- C. **Minimum Wages** Except for employees whose wage is required to be fixed pursuant to Section 220 and/or Section 230 of the Labor Law of the State of New York, all persons employed by the Contractor and any subcontractor in the manufacture or provision of the supplies, materials, or equipment, or the furnishing of work, labor or services used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than Federal minimum hourly wage rate.

- 1. For any breach or violation of the requirements of this Article 22, the Contractor and its subcontractor shall be liable to the Board for liquidated damages. Said damages may be withheld from any amounts due upon this Contract or upon any contract between the Board and such party responsible, or may be recovered in suits brought by the Corporation Counsel in the name of the Board, same to be in addition to damage(s) for any other breach of this Contract, and in a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Contract. In addition,

the Board shall have the right to cancel this Contract for any violation of this Article 22 and to enter into other contracts for the completion of the work, and the Contractor shall be charged for any additional cost of completion. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages in violation of this Article 22, shall be held in a special deposit account and shall be paid without interest on order of the Commissioner of Labor, directly to the employees who have been paid less than minimum rate of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the Board. In the event of any breach or violation of any of the foregoing, and in addition to the other provisions herein, the Chancellor's Designee may determine that no contracts shall be awarded to the Contractor or subcontractor, as the case may be, or to any firm, corporation, partnership or association in which the Contractor or subcontractor has an interest, until four (4) years shall have elapsed from the date of such breach.

2. The Contractor and its subcontractors shall within ten (10) days after mailing of a Notice of Award or written purchase order hereunder, post in prominent and conspicuous places in each and every plant, factory, building and structure where employees of the Contractor and its subcontractors engaged in the performance of this Contract are employed, notices furnished by the Board in relation to prevailing wages and supplements, minimum wages and other stipulations contained in Federal Law, the Administrative Code of the City of New York and the Labor Law of the State of New York, and the Contractor and his subcontractors shall continue to keep such notices posted in such prominent and conspicuous places until final acceptance of the supplies, materials, equipment, work labor or services required to be furnished or rendered under this Contract.
3. The Contractor and its subcontractors shall keep such payroll and employment records as are required pursuant to the provisions of the Administrative Code of the City of New York and the Labor Law of the State of New York.
4. In all orders or contracts entered into by the Contractor with any subcontractor for: a. manufacturing or furnishing any of the supplies, materials or equipment under the Contract; and b. furnishing any of the work, labor or services required under the Contract, the Contractor shall insert a notice to the subcontractor to the effect that such supplies, materials, equipment or work, labor or services are for the Board of Education and that the subcontractor is subject to the provisions of the Administrative Code of the City of New York and the Labor Law of the State of New York.
5. At the time the Contractor makes application for each partial payment and for final payment, the Contractor shall submit to DSF a written certification of compliance with the prevailing wage, minimum wage and other provisions and stipulations required by Section 220 and/or Section 230 of the Labor Law of the State of New York and the Administrative Code of the City of New York, and the rules and regulations adopted pursuant thereto, and any and all supplements and amendments to such rules and regulations. Compliance with the provisions of this paragraph shall be a condition precedent to payment, and no payment shall be made to the Contractor unless and until each such certification shall have been received by DSF.
6. This Contract is executed by the Contractor with the express warranty and representation that the Contractor is not disqualified under the provisions of the Administrative Code of the City of New York for the award of Contract, or as a result of any determination of the Chancellor's Designee.
7. Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this Contract, and grounds for cancellation of the Contract by the Chancellor's Designee.

ARTICLE 23: INSURANCE

During performance and up to the date of final approval of the work by DSF's Office of Building Services, the Contractor must provide and maintain with companies satisfactory to DSF and licensed by the State of New York to issue such insurance, Workers' Compensation and Comprehensive General Liability insurance coverage, in an amount not less than \$1,000,000 per occurrence, with the Board and the City named as additional insured. Such proof of insurance shall be provided on Accord certificate with NAIC Number.

ARTICLE 24: WORKERS' COMPENSATION

All employees engaged in the work must be insured under the "Workers' Compensation Law". Any purchase order shall be void and of no effect unless the person, firm, or corporation making or performing the work shall secure and maintain workers' compensation coverage for said employees, in compliance with the provisions of applicable law, throughout the life of this Contract. The Contractor shall attach to all application(s) for payment a certificate of workers' compensation insurance showing such compliance from the date of the purchase order until the final

acceptance of the work by DSF.

ARTICLE 25: PREVENTION OF DELAY

The Contractor shall not have work performed or means employed in the carrying out of any purchase order under this Contract that would in any way cause or result in a suspension, delay or strike upon any work to be performed in or about the premises where the work is being performed, or in or about any premises owned by the City of New York. Any violation by the Contractor of this requirement may be considered sufficient grounds for a declaration of default of contract by the Chancellor's Designee.

ARTICLE 26: TIME OF BEGINNING AND COMPLETING THE WORK

The Contractor will commence the work upon issuance of an official purchase order for the work to be performed. The time fixed in the specifications for the completion of the work shall begin to run three (3) days from the date of the authorized DSF official's signature on the purchase order.

ARTICLE 27: DEFAULT OF CONTRACT

The Chancellor's Designee shall have the right to declare the Contractor in default upon the whole or part of the work, upon charges of default brought before it, based upon any of the following:

- A. If the Contractor shall fail to begin the work to be done under any purchase order, or if the work shall be abandoned by the Contractor, or assigned or sublet other than as specified herein, or if the Contractor shall at any time refuse or neglect to supply sufficient labor of the proper skill and materials of proper quality, or shall fail in any respect to prosecute the work required by the purchase order with promptness and diligence, or assign any contract monies without the consent of the Board, or shall omit to fulfill any provision herein contained, or if the Contractor becomes insolvent and a voluntary or involuntary petition in bankruptcy be filed by or against the Contractor, or if the performance of any purchase order is unnecessarily or unreasonably delayed, or if the Contractor is willfully violating any of the provisions or covenants hereof, or of any order, or of the plans or specifications, or is executing the same in bad faith, or not in accordance with the terms thereof, or if the work is not fully completed within the time specified in the purchase order for completing same.
- B. Upon a finding of default in violation of this Contract by the Chancellor's Designee, Contractor may be deemed disqualified from bidding on jobs with the Board and the City for a period of four (4) years, unless in such finding of default, a lesser penalty is imposed by reason of mitigating circumstances.
- C. DSF, after a declaration of default by the Chancellor's Designee, may have the work completed by such means and in such a manner by contract with or without public letting, or otherwise, utilizing for such purpose, such part of the plan, materials, equipment, tools and supplies remaining on the site, as DSF shall deem advisable. The Contractor shall be liable for, and agrees to pay the Board, the difference between the amount of the original purchase order and the cost to complete the remaining work, which sum may be recovered from any monies due the Contractor upon any contract between the Contractor and the Board or the City.

ARTICLE 28: CANCELLATION OF CONTRACT

The Director of Office of Administration or Senior Director of Division of School Facilities may, at any time, terminate this Contract by written notice to the Contractor, and in such event:

- A. The Contractor shall, upon receipt of such notice, unless otherwise directed by the Director:
 - 1. stop work on date specified on the notice;
 - 2. cancel all cancelable orders of material and equipment;
 - 3. take no action which will increase the amounts payable by the Board under this Contract;
 - 4. deliver to any location designated by the Director, any non-cancelable orders of material that can not be used except in the performance of this Contract and has been specifically fabricated for this Contract work and not yet incorporated in the work.
- B. On all lump sum and unit price contracts, the Board will pay the Contractor:
 - 1. Its direct cost as hereinafter defined for:
 - a. the portion of the work completed or all the units completed up to the time of termination, and
 - b. non-cancelable material that can not be used except in the performance of this Contract and has been specifically fabricated for this contract and not yet incorporated in the work.

2. Five percent (5%) of the direct cost as hereinafter defined.
 3. In addition to the foregoing, the Contractor shall be paid five percent (5%) of the difference between the Lump Sum Contract Price and the total of all payments made prior to the notice of termination plus all payments allowed pursuant to Section B, paragraphs 1 and 2 of this Article.
 4. Direct costs as used in this Article shall mean:
 - a. The actual purchase price of material and equipment plus necessary and reasonable delivery costs.
 - b. Actual cost of labor involved in construction and installation at the site.
 - c. Actual cost of insurance purchased pursuant to the requirements of this Contract less any amounts that have been or should be returned by the Contractor's insurance carriers.
 - d. Direct costs shall not include overhead.
- C. The Board may deduct or set off against any sums due and payable pursuant to this Article, any claims it may have against the Contractor.
- D. All payments pursuant to this Article are subject to audit.

ARTICLE 29: NOTICES TO CONTRACTORS

The residence or place of business given in the bid is hereby designated as the place where all notices, letters and other communications addressed to the Contractor shall be served, mailed or delivered. Any notice, letter, or other communication addressed to the Contractor and delivered or deposited in a post-office box regularly maintained or authorized by the postal service, shall be deemed sufficient service upon, and notice to, the Contractor. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication, upon the Contractor personally.

ARTICLE 30: NO ESTOPPEL

Neither the City nor the Board, nor any Department or Officer thereof shall be precluded or estopped by any return or certificate made or given by the Director or other officer, inspector, agent, or appointee of the Board or the City, under any provision of this Contract, from at any time (either before or after the final completion and acceptance of the work and payment therefore, pursuant to any such return or certificate), showing the true and correct amount and character of the work done and materials furnished by the Contractor or any other person under this Contract, or from showing at any time that any such return or certificate is untrue and incorrect or improperly made in any particular, or that the work, or any part thereof, does not in fact conform to the specifications; and neither the Board nor the City shall be precluded or estopped notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from the Contractor such damages shall have sustained by reason of the failure of the Contractor to comply with the specifications.

ARTICLE 31: ACCEPTANCE OF PAYMENT

The acceptance by the Contractor, or by its legal representatives or assigns, of a payment as finally audited and paid by the Comptroller under any purchase order, shall operate as and shall be a full and complete release of the Board and the City of and from any and all claims, demands and causes of action whatsoever, which the Contractor and any of its subcontractors, legal representatives or assigns, has or may have against the Board or the City by reason of any matter arising from, connected with, or relating to the purchase order.

The Contractor, however, shall not be barred from commencing an action for breach of contract under this provision provided that a detailed and verified notice of claim is served upon the Board not later than ninety (90) days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based, and any such claim shall be limited to such items.

ARTICLE 32: SUB-CONTRACTING OF WORK

The Contractor shall be required to perform directly, and without sub-contracting, not less than 51% of the contract, said percentage to be calculated on the basis of the total contract price reduced by an allowance for the Contractor's overhead and profit. (also see Article 34)

ARTICLE 33: ASBESTOS REGULATIONS

All Contractors are required to comply with all federal, state and local laws and regulations governing asbestos

work. Copies of Local Law 76/86, Local Law 70/86, and applicable regulations, as published in the City Record, may be obtained from: City Books, Room 2223, Municipal Building, One Centre Street, New York, New York 10007, or from DSF in the Bid Room. Other Asbestos regulations, as issued by the Department of Environmental Protection, will be effective on the date required by law.

Since the regulations may affect the work of the contract, all contractors are advised to be familiar with the requirements.

Questions regarding the Local Laws and regulations should be directed to: Department of Environmental Protection, Licensing and Certification Unit, Asbestos Control Program at: 59-17 Junction Boulevard, Corona, N.Y. 11368, (718) 595-3695 or to the Environment, Health and Safety Section of the Division of Schools Facilities (718) 361-3808.

ARTICLE 34: LOCALLY BASED ENTERPRISE (LBE) PROGRAM

The Board requests voluntary compliance with the requirements of Administrative Code, 6-108.1 and the regulations promulgated thereunder. No construction contract will be awarded unless and until the Board has evaluated efforts made by contractor in attempting to comply with these requirements.

Be advised that for mayoral agencies:

- A. If any portion of the contract is subcontracted, not less than ten percent of the total dollar amount of the contract shall be awarded to locally based enterprises ("LBEs"); except where less than ten percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.
- B. No contractor shall require performance and payment bonds from LBE subcontractors.
- C. No contract shall be awarded unless the contractor first identifies in its bid:
 1. the percentage, dollar amount and type of work to be subcontracted: and
 2. the percentage, dollar amount and type of work to be subcontracted to LBEs.
- D. Within ten calendar days after notification of low bid, the apparent low bidder shall submit an "LBE Participation Schedule" (Form LBE-A1) to the contracting agency. If such schedule does not identify sufficient LBE subcontractors to meet the requirements of Administrative Code, 6-108.1, the apparent low bidder shall submit documentation of its good faith efforts to meet such requirements.
 1. The "LBE Participation Schedule" (Form LBE-A1) shall include:
 - a. the name and address of each LBE that will be given a subcontract,
 - b. the percentage, dollar amount and type of work to be subcontracted to the LBE, and
 - c. the dates when the LBE subcontract work will commence and end.
 2. The following documents shall be attached to the "LBE Participation Schedule" (Form LBE-A1):
 - a. verification letters from each subcontractor listed in the "LBE Participation Schedule" (Form LBE-A1), stating that the LBE will enter into a formal agreement for work (Form LBE-A2),
 - b. certification documents of any proposed LBE subcontractor which is not on the LBE certified list, and
 - c. copies of the certification letter of any proposed subcontractor which is an LBE.
 3. Documentation of good faith efforts to achieve the required LBE percentage shall include as appropriate but not be limited to the following:
 - a. attendance at pre-bid meetings, when scheduled by the agency, to advise bidders of contract requirements;
 - b. advertisement where appropriate in general circulation media, trade association publications, and small business media of the specific subcontracts that would be at least equal to the percentage goal for LBE utilization specified by the contractor;
 - c. written notification to associations of small, minority and women contractors soliciting specific subcontracts;
 - d. written notification by certified mail to LBE firms that their interest in the contract is solicited for specific work items and their estimated values;
 - e. demonstration of efforts made to select portions of the work for performance by LBE firms

- in order to increase the likelihood of achieving the stated goal;
 - f. documented efforts to negotiate with LBE firms for specific subcontracts including at a minimum:
 - (1) The name, addresses and telephone numbers of LBE firms that were contacted,
 - (2) A description of the information provided to LBE firms regarding the plans and specifications for portions of the work to be performed,
 - (3) Documentation showing that no reasonable price can be obtained from LBE firms,
 - (4) A statement of why agreements with LBE firms were not reached;
 - g. a statement of the reason for rejecting any LBE firms which the contractor deemed to be unqualified; and
 - h. documentation of efforts made to assist the LBE firms contacted that needed assistance in obtaining required insurance.
- E. Unless otherwise waived by the agency head with the approval of the Division of Economic and Financial Opportunity, failure of a proposed contractor to provide the information required by paragraphs C and D above may render the bid non-responsive and contract may not be awarded to the bidder. If the contractor states that it will subcontract a specific portion of the work, but can demonstrate that despite good faith efforts it cannot achieve its required LBE percentage for subcontracted work until after award of contract, the contract may be awarded subject to a letter of compliance from the contractor stating that it will comply with Administrative Code, 6-108.1 and subject to approval by the agency head. If the contractor has not met its required LBE percentage prior to award, the contractor shall demonstrate that a good faith effort has been made subsequent to award to obtain LBEs on each subcontract until it meets the required percentage.
- F. When a bidder indicates prior to award that no work will be subcontracted, no work may be subcontracted without the prior approval of the agency head, which shall be granted only if the contractor in good faith seeks LBE subcontractors at least six weeks prior to the start of work.
- G. The contractor may not substitute or change any LBE which was identified prior to award of the contract without the permission of the agency head. The contractor shall make a written application to the contracting agency head for permission to make such substitution or change, explaining why the contractor needs to change its LBE subcontractor and how the contractor will meet its LBE subcontracting requirement. Copies of such application must be served on the originally identified LBE by certified mail, return receipt requested, as well as the proposed substitute LBE. The agency head shall determine whether or not to grant the contractor's request for substitution.

ARTICLE 35: MACBRIDE PRINCIPLES

Part I

- 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.
- 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 under represented 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 under represented 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 under represented 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 under represented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from under represented religious groups;

- h. establish procedures to assess, identify and actively recruit employees from under represented 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.

Part II Enforcement of Part 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.

END OF CONTRACT NO.1

—