

**BOARD OF EDUCATION OF THE CITY OF NEW YORK
DIVISION OF SCHOOL FACILITIES**

**INSTRUCTIONS TO BIDDERS FOR
REQUIREMENTS AND SERVICE CONTRACTS**

1. BIDS

Sealed Bids will be received by the Senior Director, Division of School Facilities, Department of Education of the City of New York, at his office, 44-36 Vernon Boulevard, Fifth Floor, Borough of Queens, until 2 P.M. on the advertisement date appearing in the City Record.

2. TIME OF PERFORMANCE

The proposed contract is for the period commencing three days from the date of PURCHASE ORDER or Notice to Begin Work issued to the contractor in accordance with schedule specification. The Board of Education maintains the right to terminate the contract at any time in accordance with terms and conditions as outlined in Article 74 of the contract.

3. INTENT AND SCOPE

This contract is intended to cover, during the period of the contract, the services outlined in the Schedule Specification which is annexed hereto.

4. CONTRACT DOCUMENTS EXAMINATION BY BIDDERS

Bidders must examine the contract drawings if any, the specifications and the RS-29 REQUIREMENTS/SERVICE CONTRACT (Form of Contract), and satisfy themselves as to the quantity of the work, and from personal examination of the locations of the proposed work and the surroundings thereof, make their own estimate of the facilities and difficulties attending the performance and completion of the proposed work. No bidder shall at any time, dispute or complain of the quantity of the 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 done.

**ALL CONTRACTORS, SUBCONTRACTORS AND THEIR EMPLOYEES
WORKING AT ANY BOARD OF EDUCATION PREMISES MUST
FURNISH PROOF OF IDENTITY UPON DEMAND AND WEAR
IDENTIFICATION BADGES AS PER SECTION S.15.**

If any person contemplating submitting a bid for the proposed contract is in doubt as to the TRUE MEANING, OR BELIEVES THAT THERE IS AN ERROR, DISCREPANCY, INCONSISTENCY, INDEFINITE DESCRIPTION, OR AN IMPOSSIBILITY OF PERFORMANCE, of any part of plans, specifications or other proposed contract documents, he MAY SUBMIT to the Director a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any and all interpretations and any such supplemental instructions will be in the form of written Addenda to the Specifications which, if issued, will be mailed to all prospective bidders (at the respective addresses furnished for such purposes) not later than three days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum shall not relieve any bidder from any obligation under his bid as submitted. All Addenda so issued shall become part of the contract documents.

5. FORM OF BID

- a) Bidders shall make their bid upon the form prescribed by the Director, a copy of which is attached, with the proper envelope in which to enclose the bid, can be obtained on the Fifth Floor, 44-36 Vernon Boulevard, Long Island City, New York, 11101.
- b) The bid shall be placed in the proper envelope which shall be tightly sealed and delivered to the appropriate place as stated in the advertisement in the City Record, before the expiration of the time for receipt of bids. On this envelope there shall be written the Title of the contract, Specification Number, the Item or Class number, if any, the Name or Number of the School and Borough, the Bid Opening Date and the Name of your firm.

5A SUBCONTRACTING.

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 24)

6. BID SECURITY

a. Every bid for a contract specifying an estimated annual amount, a "not-to-exceed price" or contract ceiling of \$50,000. or more, shall be accompanied by either:

- 1. a **Bid Bond** on the form approved by the Director, and included herein, issued by a surety company, licensed and authorized to issue Fidelity and Surety insurance in the State of New York. Licensed Surety Companies are listed in the "Directory of Insurance Companies Licensed in New York State", which is published by the New York State Insurance Department. The Bid Bond shall be in a penal sum equal to at least **10% of the estimated annual amount or the not-to-exceed price** of the contract,
or
- 2. a **money order or a certified check** in the sum of not less than **5% of the estimated annual amount or the not- to-exceed price** of the contract which certified check shall be drawn upon a State or National Bank or Trust Company, signed by a duly authorized officer thereof, and made payable to the order of the Comptroller of the City of New York,
or
- 3. a **deposit of obligations of the City** described in Section 106 of the General Municipal Law in an amount approved by the Comptroller as being equal to **5% of the estimated annual amount or the not-to-exceed price** of the contract. Such bid Security shall be enclosed in the sealed envelope containing the bid.
- 4. IF A CONTRACTOR SHALL FAIL TO PROVIDE BID SECURITY AS STATED ABOVE, SAID BID WILL BE DECLARED "NON-RESPONSIVE" AND THE NEXT LOWEST BID WILL BE CONSIDERED. Two (2) non-responsive declarations within one (1) year shall constitute grounds for a determination by the Board of Review that the bidder is not a responsible bidder.

b. In the event a bid deposit under Sub-paragraphs (2) and (3) above is submitted in lieu of a Bid Bond, such bid deposits will be released as follows:

- 1. Within three days after bid opening the bid deposits of all but the 3 low bidders will be released.
- 2. The Bid deposits of the 2 unsuccessful bidders of the 3 low bidders will be released
 - (aa) upon award of contract or rejection of bids by the Board or
 - (bb) after the expiration of 15 days from opening of bids and upon a recommendation by the Director to the Board of Education recommending award to the low bidder.

3. The Bid deposit of the successful low bidder will be released upon

(aa) rejection of bids by the Board or

(bb) execution by such bidder of the Contract, and the furnishing of the Performance Bond and Payment Bond if such bonds are specified and required in the contract documents.

4. If the bidder to whom the contract is awarded refuses or neglects to execute the same and to furnish the required bonds within 5 days after notice from the Secretary of the award, the amount of his bid deposit, or as much thereof as may be applicable to the amount of the award made to him shall be forfeited. The bidder shall also be liable for and agrees to pay the City on demand, the difference between the price bid by him and the price for which such contract shall be subsequently relet, including the cost of such reletting, if any, less the amount of his deposit. No plea of mistake in a bid shall be available to the bidder for the recovery of his deposit or release from his bid bond or as a defense to any action based upon the neglect or refusal to execute a contract.

c. Any statement or declaration made by the bidder found to be untrue will be sufficient cause for forfeit of his bid security by the Board of Education.

7. SECURITY FOR CONTRACTS - PAYMENT BONDS

Within 10 days after issuance of a Proceed Order in an amount \$50,000. or more, the contractor shall execute and deliver to the Division of School Facilities (DSF) a Labor and Material Payment Bond issued by a Surety Company which is (1) licensed to do business in the State of New York and (2) approved by the DSF. Licensed Surety Companies are listed in the "Directory of Insurance Companies Licensed in New York State" which is published by the New York State Insurance Department. Bonds shall be submitted in such form as shall be prescribed by DSF, copies of which are provided with the contract documents. Each such bond shall be in penal sum of at least 100% of the contract amount of the work to be furnished; provided, however, that more than one Licensed Surety may be utilized to provide the required coverages where permitted by the Comptroller of the City of New York.

During the performance of the work, the contractor shall have the responsibility of immediately adjusting the penal sum of the Bond to cover 100% of the increased value of any amended Proceed Order for any individual project.

Where the initial value of the Proceed Order for an individual project was less than \$50,000, but later, subsequent to issuance of an amended Proceed Order, is or exceeds \$50,000, the bonding requirement shall apply.

8. 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 for School Support Services (DSF), or her 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.
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. Net liquid assets available to perform the project upon which he is bidding in an amount equal to 25% of the first \$25,000 of the amount bid, plus 15% of the next \$100,000, plus 10% of the next \$900,000, plus 5% of the remainder of the amount bid. As part of the qualification documentation, the contractor is required to submit a review or audit level financial analysis from a Certified Public Accountant (C.P.A.) or a Licensed Public Accountant (L.P.A.); a compilation is not acceptable.
4. Satisfactorily performed to final completion, a minimum of ten contracts of a similar type and nature in the trade(s) for which qualification is sought. The monetary value of the ten contracts shall be as follows:
 - a) Two contracts valued at \$30,000 or more
 - b) Three contracts valued at \$20,000 or more
 - c) Five contracts valued at \$10,000 or more

At the discretion of the Senior Director, a combination of the above may be considered experience sufficient for qualification.

A minimum of five of the above contracts must have been performed as the prime contractor. If any of the ten contracts were not performed as the prime contractor, but rather, as a subcontractor, then all pertinent information necessary to make contact with both the prime contractor and the owner of the premises must be provided. This information shall include complete names, titles, addresses and telephone numbers.

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

- 5 All required license(s) in order to be in full compliance with the licensing and regulatory provisions of the Administrative Code of the City of New York which shall include, but not be limited to, a Master Plumber License in conformity with Sections 26-131, 26-138 and 26-142; and a Master Electrician License in conformity with Section 27-3013.
6. If, after investigation, the bidder is found to have complied with the above qualifications, he shall be considered eligible for award of contract, and be permitted to bid for similar work for one year from the date of such qualification. However, the contractor will be required to submit a financial statement satisfactory to DSF for each subsequent year, in order to continue eligibility status.
7. The Division of School Facilities may require that the bidder maintain a permanent place of business, and, along with the qualifications described above, will take into consideration whether or not he has previously failed to perform contracts properly or complete them on time; is in a position to undertake the contract; or has, without just cause, neglected the payment of bills or otherwise disregarded his obligations to subcontractors, suppliers or employees.

8. The foregoing should not be interpreted to prevent the DSF or the Board of Education from rescinding eligibility status for good cause.

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 for School Support Services or his/her designee. The adequacy of such documentation shall be within the discretion of the Chief Executive, 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).

9. REJECTION OF BIDS

- a. The Board of Education reserves the right to reject any or all bids.
- b. No award will be made to a bidder who shall fail to submit the qualification statement setting forth the facts required to be set forth, or a bidder whose statements set forth in such qualification statement are found to be untrue.
- c. Any statement or declaration made by the bidder found to be untrue, will be sufficient cause for rejecting his bid.
- d. The Board may reject any bid which does not conform to the requirements of these "Instructions to Bidders". The Board, however, reserves the right, if it is in their interest to do so, to waive informalities in a bid, or failure to comply with all requirements of these instructions.
- e. The Board may reject any bid upon their determination that it is submitted by an irresponsible bidder.
- f. If more than one bid submitted by a bidder is under consideration for award of contract by the Board and the bidder is able to meet the qualifications of Para. 8 for some, but not all such contracts, the Board will determine which contract or contracts shall be awarded him and which of his bids should be rejected because of inability to meet the qualifications required by Par. 8.

10. EXCISE TAX

Bidders are hereby notified that they are exempt from payment of the Manufacturer's excise taxes for material purchased for the exclusive use of the City of New York or any of its agencies, provided that the Manufacturer has complied with the Rules and Regulations of the Commissioner of Internal Revenue.

11. CONTRACT AWARD

The Board of Education will either award the contract or reject all bids. Award, if any, will be made to the lowest responsible bidder complying with the terms of the proposal and the contract documents, as determined by the Board of Education.

12. NO TEXT.

13. NO TEXT.

14.NO TEXT.

15.NO TEXT.

16.WAGE RATES

If the work of this contract is covered by the provisions of Labor Law Sections §220 (Labor Upon Public Works) or §230 (Building Services), the following provision(s) shall apply:

The Office of the Comptroller of the City of New York has certified wage rates, which rates have been established by him pursuant to the laws of the State of New York. These wage rates are posted in the Bid Room. The Contractor and every sub-contractor on contracts shall post in a prominent place on the site of the work a legible statement of all wage rates as specified to be paid for the various classes of mechanics, working men or laborers employed on the work.

17.OPEN MARKET ORDERS

When the amount of an award does not exceed \$49,999.99., Open Market Orders may be issued and the contractor warrants that it can and will perform the order without making any assignment of the monies due or to become due. In the event an Open Market Order is issued, the contractor shall be bound by the terms of Contract No. I.

18. NO TEXT.

19.LIQUIDATED DAMAGES

Liquidated damages for failure to begin or to complete the work in compliance with the terms of this Agreement shall be assessed against the Contractor . In view of the difficulty of accurately ascertaining the loss which The Board of Education will suffer because of failure to perform and/or complete the work of this contract, liquidated damages, in the amount set forth below, are fixed and agreed upon as liquidated damages and not as penalty:

The Board and the Comptroller will deduct and retain out of the monies which may become due under this contract the amount of any such liquidated damages. In case the amount which may become due is less than the damage suffered by the Board, the Contractor will be liable to pay the difference upon demand by the Board.

Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver of the Board's right to indemnification or to any other remedy provided for by the contract or by law.

Liquidated damages, for failure to commence the work at the time specified in each proceed order and for failure to complete the work within the time specified in each proceed order, shall be assessed in the amount of five percent (5%) of the value of the proceed order for each day of delay.

If an item or unit etc., is to repaired hereunder and such item or unit fails to function properly at any time within fifteen (15) calendar days after a repair has been performed, it shall be deemed that the contractor did not complete the work within the time specified, and liquidated damages shall be assessed in the amount of five percent (5%) of the value of proceed order for each day the unit or item shall fail to function properly until the follow-up repair is completed.

20. WITHDRAWAL OF BIDS PRIOR TO CONTRACT AWARD

After the opening of bids, a request by a bidder to the Board of Education for consent to the withdrawal of his bid will be considered only under the following terms and conditions:

- 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 days after the opening of the bid, whichever period is shorter. Any request must be sent by registered mail, and must be postmarked no later than 72 hours following the opening of the bid. Request received after 72 hours of the bid opening shall be rejected. The bidder shall have the right to appeal this decision directly to the Chancellor's Designee.
 - (2) The price bid was based on an error of such magnitude that enforcement would be unconscionable.
 - (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 judgement error.
 - (4) The error in the bid is actually due to an unintentional and substantial arithmetic error or 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.
 - (5) It is possible to place the Board, in the same position as before the withdrawal.
- b. Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this provision shall be withdrawal of that bid 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 rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited.
- c. All requests will be referred to the Director of Financial Operations. Its decision shall be final.
- d. Bidders requesting consent to the withdrawal of bids shall make available to the Director and the Board of Review all work sheets, summary sheets and other data requested as pertinent to its inquiry. Failure to make available data requested will result in refusal of consent to the withdrawal of bids.
- e. Whenever any bidder or Contractor requests consent of the Board of Education to the withdrawal of his bid, the Board of Education may grant such request in any case which it deems just and proper, but such request shall be made and such consent to withdraw shall be accepted by the bidder upon the express condition that said bidder shall be excluded from bidding again on the same item or proposal. Should any bidder request the withdrawal of more than one bid in any twelve month period, he shall be disqualified from bidding on Board of Education work for a period of one year from the date of the second request.
- f. Withdrawal of bid is permissible for contracts requiring bid security in accordance with paragraph 6 after 45 days from date of bid opening, provided such withdrawal is made prior to contract award.
- g. Withdrawal of bid is permissible for contracts not requiring bid security after 60 days from date of bid opening, provided such withdrawal is made prior to contract award.
- h. Except for the circumstances described in subparagraphs 20(f) and 20(g), where requests shall not be referred to the Director of Financial Operations, any requests for a Withdrawal of

Bid must be accompanied by a certified check made payable to the Board of Education, Administration of Business Affairs, to defray the cost. Such checks shall be in the amount of five hundred dollars (\$500.00) for bids of fifty thousand dollars (\$50,000.00), or greater. Where the bid is less than fifty thousand dollars (\$50,000.00), a two hundred and fifty dollar (\$250.00) check is required. Such fees are non-refundable.

21. OTHER THAN REGULAR HOURS:

- A. The Contractor may be directed to perform work in buildings under the jurisdiction of the Board of Education on Saturday, Sunday, Holiday and other than normal hours of duty on business days. When the Contractor is so directed, the Department will waive school opening fees for the extra services entailed.
- B. If the building (space) is available for work to be performed during normal working hours and the Contractor requests and receives permission to perform work on Saturday, Sunday, Holiday and other than normal hours of duty on business days, the Contractor shall be required to pay the Board of Education for the duly authorized extra service entailed. The cost of this extra service is subject to changes in the Department's costs. Currently the fees are as follows:
 - a. After 5:00 P.M. on business day - \$40.00/hour
 - b. Saturday, Sunday and Holiday - \$40.00/hour (Four Hour Minimum)
 - c. Before 7:45 AM on business day - \$40.00/hour
- C. Holidays are established by the Department and the School Year List is posted on the Department's Web Site. Normally included holidays are: NEW YEAR'S Day, MARTIN LUTHER KING, JR.'S BIRTHDAY WASHINGTON'S Birthday (President's Day), LINCOLN'S Birthday (Observed Date) , MEMORIAL Day, INDEPENDENCE Day, LABOR Day, COLUMBUS Day, VETERANS' Day, THANKSGIVING Day and the Day after Thanksgiving, CHRISTMAS Day, GOOD FRIDAY, ROSH HASHANAH AND YOM KIPPUR.
- D. When several Contractors are working at school at the same time of the day herein before stated each Contractor will pay the Custodian-Engineer, Custodian or Cleaner-in charge his share of fee which will be derived by dividing the Custodian Compensation Fee per hour or Minimum Fee by the number of Contractors at work. Custodian-Engineer, Custodian or Cleaner-in-charge will keep an hourly record of number of Contractors at work and their names.
- E. For keeping the schools open for the benefit of Contractors for purposes or in a manner not clearly covered in the foregoing schedule and schedule conditions, the Chancellor and the Administrator of Business Affairs shall be empowered to apply the most equitable rate or rates.
- F. Contractor shall not pay the Custodian anything in excess of the above Schedule of Payments.

22. OVERTIME WORK

The Contractor is hereby advised that the Board of Education reserves the right to order and pay for overtime work when a delay occurs, provided such delay is not the fault of the Contractor. Such overtime work shall not be authorized until the following steps have been taken:

1. The Contractor shall obtain PW Form 30 (Application for Dispensation) from the State of New York Dept. of Labor, Bureau of Public Work.
2. After filling out this form in duplicate, the Contractor shall submit it to the authorized representative of the Board of Education for Certification of that section of the form which

states that the described public work project is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public.

3. The Contractor shall submit the certified forms to the Industrial Commissioner of the New York State Labor Department for determination that such an emergency does in fact exist, as provided in sub-division 2 of Section 220 Labor Law.
4. If the Industrial Commissioner approves, he will issue a Certificate of Emergency (PW Form 31 - Notice of Determination) to the Contractor with a copy to the Board of Education.
5. Upon receipt of this certificate, the Contractor is authorized to proceed promptly. For each such emergency, the Contract price will be adjusted in accordance with the provisions of the Contract.

23. EQUAL OPPORTUNITY REQUIREMENTS FOR CONTRACTORS

The attention of all bidders is particularly directed to the various provisions set forth in the contract documents with respect to providing equal employment opportunity, prohibiting discrimination in employment, soliciting of minority subcontractors, and providing on-the-job training programs.

This contract is subject to the NYC Charter, Chapter 35, Section 814 (k) for employment agencies, and by signing this contract, the Contractor agrees that it shall not discriminate against employees or applicants for employment pursuant to federal, state or local law.

A. Pre-Award Conference

Prior to the award of contract to the low bidder, and if requested by the Office of Equal Opportunity, such bidder shall attend a pre-award conference to be held in the Office of Equal Opportunity of the Board of Education for the purpose of acquainting him with the statutory and contractual requirements and what specific measures shall constitute an acceptable program of Affirmative Action.

B. Program of Affirmative Action

1. The low bidder for the contract, prior to the award thereof, shall submit to the Director of the Office of Equal Opportunity of the Board of Education a policy letter known as a Program of Affirmative Action.
2. The term "Program of Affirmative Action" (hereinafter referred to as P.A.A.) means a written plan formulated by a contractor which includes an analysis of employment, at all levels and in all categories and aspects of its work force, which indicates at which levels and in what categories and aspects, if any, the contractor is deficient in the utilization of minority groups; and contains goals and timetables toward the attainment of which the contractor's good faith effort must be directed to correct those deficiencies.
3. The P.A.A. shall apply to all Board of Education contracts except that, with regard to contracts under \$50,000., the Director of the Office of Equal Opportunity shall be authorized to make such modifications as may be appropriate in the individual case.
4. The low bidder's P.A.A. with respect to the affirmative action to be taken by him in connection with equal employment opportunity, will be considered by the Board of Education in its determination as to whether a numerical low bidder is entitled to award of this contract.
5. The low bidder's written P.A.A. must be submitted to the Director of the Office of Equal Opportunity within 15 days after the bid opening. The Director of the Office of Equal Opportunity acting for the Chancellor shall be the judge of the Program's acceptability.

6. In the event the low bidder fails to submit an acceptable written P.P.A. within the said 15 days, the Director of Equal Opportunity may recommend that the low bid be rejected, the amount of the bid deposit be forfeited, and that the low bidder be disqualified from bidding on Board of Education work for a period of one year.
7. NO TEXT
8. Nothing herein shall be interpreted or enforced as requiring the use of quotas in hiring.
9. An acceptable P.A.A. shall also include the following:
 - a. NO TEXT
 - b. Written evidence or other proof which shows that minority subcontractors have been solicited and given an equal opportunity to submit proposals and that such proposals have been given equal consideration for award. The Office of Equal Opportunity, Board of Education, shall maintain a list of minority contractors which have satisfied the requirements of the Board of Education for competence and financial responsibility.
 - c. A commitment that the low bidder understands and will comply with the requirement to submit monthly equal opportunity-contractor workforce reports to the Office of Equal Opportunity, Board of Education.
 - d. Commitment to good faith efforts to participate in programs for rapid advancement to full journeyman pay scale of minority employees who by training and /or experience can perform the duties of a qualified journeyman.
 - e. The P.A.A. shall specify the unions or other employee organizations from which the contractor anticipates obtaining workers in each building and construction trade, and shall include commitments to good faith efforts to seek to affect, directly or through its contractor's association or other employer organization, programs by such unions or organizations to advance trainees to journeyman status when they successfully complete their course of training and programs to accept new minority apprentices at the rate of no less than one minority apprentice to every three non-minority apprentices.
 - f. Unless otherwise exempted by the Board of Education all facilities of the Contractor, including any which are in any respect separate and distinct from activities of the contractor related to the performance of the contract shall be equally subject to these provisions.
 - g. The P.A.A. or portions thereof, shall be submitted on such forms as shall be provided by the Office of Equal Opportunity, Board of Education.
 - h. The P.A.A. shall include a commitment to submit to the Office of Equal Opportunity, Board of Education, a separate P.A.A. of the form and substance specified in subdivisions (a.) through (g.) hereof, for each subcontractor(s), vendor(s) or supplier(s) prior to its approval by the Board of Education. Such submissions for subcontractors, vendors or suppliers must be submitted to the Director of the Office of Equal Opportunity by the prime contractor and approved at least 30 days prior to their signing of a contract with subcontractors, vendors or suppliers. This requirement includes subcontractors, vendors or suppliers regardless of their tier.
 - i. Unless otherwise exempted by the Board of Education, no specific good faith commitment, including goals of minority manpower utilization, contained in the P.A.A. shall be acceptable which is not at least equal to any such commitment contained in the most recent previous affirmative action program, if any, of the contractor.

C. Requirement After Award of Contract: In addition to a written P.A.A. the prime contractor shall:

1. File and also cause its subcontractors to file equal opportunity-compliance workforce reports monthly with the Office of Equal Opportunity, Board of Education. The Office of Equal Opportunity may require weekly or bi-weekly reports from any one specific contractor or subcontractor as it deems advisable.

Such compliance workforce reports shall indicate the following:

- a. The percentage of work completed on the Contractor's construction project (s).
 - b. The subcontractors of every tier working on the contractor's construction project (s).
 - c. The total number of workers and the total number of minority workers during the specified period in each building and construction trade, including separate statistics for journeymen, apprentices and trainees.
 - d. Explanations for any current or anticipated departures from the total manpower utilization or minority manpower utilization projected in the contractor's P.A.A.
 - e. Any and all efforts made to recruit individuals from minority groups.
 - f. All other policies or practices of the Contractor affecting compliance.
2. Cooperate with civil rights groups and responsible community organizations concerned with the need for representative numbers of minority group workers in the building and construction trade industry.
 3. Hire minority group members from other sources should the union with which he has a collective bargaining agreement be unable or unwilling to supply them.
 4. Secure from his subcontractor(s), vendor(s) or supplier(s) P.A.A. and other general requirements described above as applying to the contractor. No subcontractor shall be given an order to proceed until his P.A.A. is received and approved by the Director of the Office of Equal Opportunity.

D. Sanctions and Remedies

It is agreed that if the contractor does not comply with equal opportunity provisions herein stated, as solely determined by the Board of Education, the Contractor's contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Board of Education contracts and/or subject to such other sanctions as may be imposed and remedies invoked by the Board of Education in its discretion. Contractors shall be responsible for the compliance of their subcontractor(s), vendor(s) or supplier(s). Failure of its subcontractor(s), vendor(s) or supplier(s) to comply with the provisions hereof or with non-discriminatory contractual provisions, shall be grounds for the imposition of sanctions and remedies against a Contractor. Such sanctions and remedies include the authority of the Office of Equal Opportunity to halt scheduled payments to Contractors who fail to comply with the provisions hereof.

- E. For information concerning the Board of Education's policy or questions pertaining to Equal Employment Opportunity, bidders may consult with the Office of Equal Opportunity of the Board of Education.

24. 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:
 - (i) The names, addresses and telephone numbers of LBE firms that were contacted,
 - (ii) A description of the information provided to LBE firms regarding the plans and specifications for portions of the work to be performed,
 - (iii) Documentation showing that no reasonable price can be obtained from LBE firms,
 - (iv) 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 Office 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 the 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.

END OF INSTRUCTIONS TO BIDDERS

SUPPLEMENTARY GENERAL CONDITIONS

S.1 SCOPE

These Supplementary General Conditions supersede requirements under General Conditions of the Standard Specifications where in conflict with same; otherwise they supplement General Conditions of the Standard.

S.2 TORCH BURNING OPERATIONS

A. All torch burning operations utilizing oxygen or other combustible gases shall be performed in strict accordance with F.P. Directive 3-60, dated June 29, 1960, specifying Fire Department Rules and Regulations for issuance of permits for storage and use of oxygen and combustible gases during temporary and emergency torch burning operations together with the following additional precautionary measures:

1. No oxygen combustible gas cylinders shall be stored on premises.
2. Each oxygen or other combustible gas work area shall be separated from other areas of premises and a qualified fireguard shall be maintained on duty to insure aforementioned separation. Separated, as used herein, shall mean a temporary barricade to prohibit entrance by unauthorized persons.
3. After all oxygen and combustible gas operations have been completed, a qualified fire guard shall be continued on duty for a total of 1 1/2 hours during which time he shall make three (3) complete inspections, at half hour intervals, of entire work area for purpose of detecting fire.
4. The use of liquified petroleum gases in occupied places of assembly is strictly prohibited.

B. Contractor must notify appropriate Office of intention to proceed with any torch burning and obtain permission from the appropriate Section Chief before proceeding.

C. Each contractor performing torch burning operations shall apply and obtain Fire Department permit before commencing such work. Also, each torch burning operator shall carry on their person, at all times, a current certificate of fitness issued by Fire Department to perform this type of work.

D. Fire guard shall be stationed in work area at all times during torch burning operations and thereafter as indicated above.

E. Cost of all permits, certificates, fire guards, barricades, etc., required in connection with torch burning operations shall be borne by the Contractor at no additional cost to the Board.

S.3 CLEAN-UP

Upon completion of his work, each Contractor shall thoroughly clean-up all dirt resulting from his work as required to restore work areas to the state of cleanliness existing before work began. In general, cleaning requirements are limited to the removal of rubbish, spatters, stains, smears, foot tracks, etc. However, where work that causes the dissemination of dust has been performed, cleaning requirements shall include, in addition to the aforementioned operations, all other operations necessary to remove the dust. Also, in performing dust creating work, the Contractor shall provide dust tight enclosures and foot mats to minimize the spread of dust and foot marks.

(Note: This final clean-up is in addition to the required daily removal of rubbish) Also, Contractor shall protect drains and fixtures from clogging due to work under this contract and is hereby required to clean all drains, fixtures, traps, etc., found to be clogged because of his neglect.

S.4 NO TEXT.

S.5 CORRESPONDENCE

All correspondence regarding work of this contract shall indicate the school number or name, the contract number, specification number, and where issued, the Dept. of Water Supply, Gas and Electricity number.

S.6 WORK IN CORRIDORS AND STAIRHALLS

All such work shall be performed in accordance with requirements of N.Y.C. Fire Dept. rules and regulations governing obstruction of these locations.

S.7 INTENT

Except as otherwise specified, the Contractor shall provide all articles, materials, operations of methods listed, mentioned or scheduled herein, including all labor, materials, equipment and incidentals necessary and required for their completion.

S.8 TRAFFIC COORDINATION

Contractor shall schedule and perform work on or near streets so as to limit restriction of traffic lanes to minimum consistent with safety and requirements of work being performed. Also, Contractor shall make maximum effort to expedite flow of traffic past any unavoidable restriction. Also, during peak traffic periods, Contractor shall avoid obstructing any traffic lane required for free flow of peak traffic, except in cases of outmost emergency. Also, Contractor shall protect areas he has restricted to traffic with warning devices and barriers to alert oncoming drivers and to permit orderly adjustment of traffic in advance of road restriction.

S.9 RUBBISH REMOVAL FOR RELATED CONTRACTS UNDER SAME COVER

A. Except as otherwise noted, Contractor for Item 1 shall provide receptacles of adequate size and number in handy locations throughout interior of premises to receive general interior rubbish resulting from work of all items. Also, Contractor Item 1 shall remove from premises contents of all general interior rubbish receptacles and shall provide all labor and trucking necessary for collection and removal of such rubbish from premises. Also, Contractor for Item 1 shall broom clean areas around each receptacle at end of each day's work.

B. Contractor for each Item shall collect and remove from premises.

1. All pipes, fittings, conduits, wiring, duct work, radiators, fixtures, equipment, sheet metal, roofing, windows, and other specific rubbish resulting for his work.
2. All rubbish of any type and description, resulting from his work in boiler rooms, equipment rooms and fan rooms.
3. All rubbish of any type description resulting from any and all of his exterior work. Also, Contractor for each Item shall collect all remaining rubbish resulting from his work and deposit same in receptacles provided by Contractor for Item 1.

C. Rubbish shall not be thrown down dumbwaiters, dust chutes, and other shafts or shall rubbish be thrown from windows, roofs, and other points above grade. Also accumulated rubbish shall be removed from the premises at the end of each day's work.

S.10 START OF WORK

Each Contractor shall give the Area Manager and School Custodian 48-hour advance written notice of his intention to commence work. Notification shall include the date on which work will begin, the nature of the work to be performed, the number of workers who will participate in the work, and the expected date of completion of the work covered by the notice.

S.11 LICENSE, PERMITS, ETC.

Each Contractor shall obtain all licenses, permits, etc., required from public agencies having jurisdiction over his work and shall keep such documents properly posted at premises at all times during the performance of the work covered by these documents.

S.12 GUARANTEES

Each Contractor shall submit the application for final payment all manufacturer's guarantees and warranties for new equipment installed under his contract. Contractor shall include in these documents the names and addresses of the local firms required to service the guaranteed equipment. The Contractor shall obtain all manufacturer's guarantees and warranties of all equipment and materials required by this contract in the name of the Board and shall deliver same to the Board.

S.13 NOISE CONTROL

- A. The contractor is hereby advised that the work of this contract shall be performed in compliance with all applicable provisions of Local Law 57, New York City, Noise Control Code effective September 1, 1972.

- B. Without restricting the generality of the foregoing, the Contractor's attention is directed to the following specific provisions of this Code which is applicable to construction and related work in and around school buildings as follows:

Section 1403.3-3.01

No person shall make, continue or cause or permit to be made or continued any unnecessary noise.

Section 1403.3-4.01

Any act in violation of the provisions of this article of the code is deemed to be in violation of Article 111 of the code, without any way limiting the generality of the provisions of Article 111 of the code.

Section 1403.3-411 Construction Activities

Except as otherwise provided in this section, no person shall engage in or permit any person to be engaged in construction activities in any zone other than on weekdays between the hours of 7 A.M. and 6 P.M. Subject to provisions of Section 3.01 of the code, an agency of the City of New York authorized under the Administrative Code to issue permits or licenses authorizing construction activities may, in the case of urgent necessity in the interest of public safety, issue variance from the provisions of a sub-division of this section with respect in any such construction activity. Such variance may be granted for an initial period of up to three days and may be renewed for periods of three days or less while such urgent necessity continues. Such variance shall be clearly marked on such license or permit and shall be prominently posted at the site of such construction activities by the permittee or licensee. A copy of such marked license or permit shall be promptly forwarded to the Board. In the case of an emergency, construction activities directly connected with the abatement of such emergency may be undertaken without a variance as herein provided for a period of not to exceed twelve hours from the commencement of such construction during which time application for a variance hereunder shall be made.

Section 1403.3.4.13 Construction Devices

Except as provide in Article V of this code, no person shall operate or use or cause to be operated or used a construction device in such a way as to create a unnecessary noise.

Section 14.3.B-4.19 School, Hospitals, Courts

No person shall cause or permit the creation of any unnecessary noise through the use of any device on any street adjacent to any school or court while the same is in session, or adjacent to any hospital.

Section 14.03.3-5.21 Paving Breakers

To be operated only within the allowable sound levels indicated in the code.

- C. The Contractor is required to comply with all registration requirements issued under Section 1403.2.09 for air compressors and/or paving breakers used in the performance of the work of this contract.
- D. It shall be the responsibility of each Contractor to obtain a copy of the aforementioned Noise Control Code and acquaint himself with the applicable provisions and comply therewith in the performance of all work of this contract. Copies of this Code may be obtained at the City Record Sales Office 2213 Municipal Building, New York, N.Y. 10007.

S.14 ASBESTOS REGULATIONS

City, State and Federal Asbestos Regulations:

(a) New York City (DEP) Asbestos regulations:

All contractors are on notice that effective April 1, 1987; New York City (DEP) Asbestos regulations become effective for all actual and potential asbestos work and handling. Since the regulations may effect the work of the contract, all contractors are advised to become familiar with the Asbestos regulations.” NYCDEP Title 15 Chapter 1(Local Law 76) of the rules of the City of New York” and applicable Regulations published by the New York City Department of Environmental Protection.

Questions regarding the Asbestos regulations should be directed to:

New York City Department of Environmental Protection
Asbestos Control Program
59-17 Junction Boulevard, 8th Floor
Flushing, N.Y. 11373
718-595-3693/3682

www.nyc.gov/html/dep/html/asbestos.html

(b) New York State: Asbestos regulations:

The contractor shall become familiar with the New York State Asbestos regulations: “New York State Industrial Code, Rule 56 “Asbestos” (12 NYCRR-56)”, and all other applicable NYS laws, codes, variances and ordinances.

Address:

New York State Department of Labor
Division of Safety and Health
License and Certificate Unit
Building 12, Room 161
Albany, N.Y. 12240
518-457-2735

www.labor.state.ny.us/business_ny/employer_responsibilities/licenseetc.html

(c) U.S. Environmental Protection Agency (EPA):

The contractor shall become familiar and shall comply with the following U.S. EPA Asbestos regulations:

- US EPA Asbestos-Containing Materials in Schools: Final Rule and Notice, 40 CFR Part 763, Subpart E

Address:

Environmental Protection Agency
290 Broadway
New York, N.Y. 10007-1866
www.epa.gov/asbestos/2003pt763.pdf

- Environmental Protection Agency National Emission Standard for Hazardous Air Pollutants (NESHAP) Asbestos Regulations, 40 CFR 61 Subparts A and M.

Address:

Environmental Protection Agency
290 Broadway
New York, N.Y. 10007-1866
www.epa.gov/asbestos/2003pt61.pdf

Copies of the Asbestos regulations may be obtained from the above web address.

S.15 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 Program Manager 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 said badge.

END OF SUPPLEMENTARY GENERAL CONDITIONS