NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM

SANFORD R. RICH, EXECUTIVE DIRECTOR

DANIEL D. MILLER, DEPUTY EXECUTIVE DIRECTOR

REQUEST FOR PROPOSAL

RFP # 2021-01

Sealed proposals will be received by the
New York City Board of Education Retirement System
65 Court Street, Room 1603, Brooklyn, New York 11201

Until: 5:00PM On: July 6, 2021

Proposals will be publicly opened at the time, date and place stated.
NO LATE PROPOSALS WILL BE ACCEPTED
PLEASE NOTE ONLY THE NAMES OF PROPOSERS WILL BE READ AT THE OPENING

For:

Temporary Staffing Services

EACH PAGE OF THE SUBMISSION MUST BE LABELED WITH RFP # 2021-01

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1. INSTRUCTIONS TO PROPOSERS

1.1 Contact for This RFP

This Request for Proposals (RFP) is issued by the NYC Board of Education Retirement System (BERS or the Agency) to solicit proposals from qualified vendors to provide Temporary Staffing Services.

Respondents are advised that from the date this RFP is issued until the award of a contract, NO contact with Agency personnel related to this solicitation is permitted in regard to these specifications, the RFP response, or the eventual awarding of the contract (should a contract ultimately be awarded), except through (or as shall be authorized by) the Agency's designated contact person.

See RFP Section "1.4 Inquiries and Responses Regarding this RFP".

1.2 Proposal Submission Requirements

Interested respondents must provide one proposal responding to the requirements outlined in this RFP. In addition, Proposers may submit alternate Proposals that meet or exceed the needs outlined at an increased value to BERS. All proposals must be in PDF format transmitted via email with the email subject line "In response to BERS RFP #2021-01 for Temporary Staffing Services". Alternate Proposals must contain the subject line "In response to BERS RFP #2021-01 for Temporary Staffing Services – ALTERNATE." All email attachments must be clearly labeled. Emails shall be directed to:

New York City Board of Education Retirement System
Email: **BERSProcurement@bers.nyc.gov**

BERS must receive RFP responses by no later than 5 PM July 6, 2021 (the "Due Date"). RFP responses received by BERS after this Due Date will not be accepted.

1.3 Modified RFP Responses

A vendor may submit a modified proposal to replace a previously submitted proposal up until the Due Date and Time.

BERS shall consider only the latest timely version of any vendor's proposal.

1.4 Inquiries and Responses Regarding this RFP

Any inquiry or questions regarding this RFP must be made in writing via email by no later than 5PM EST on, June 28, 2021. For questions to be considered, they must be addressed to BERS follows:

New York City Board of Education Retirement System
Email: **Procurement@bers.nyc.gov**

The subject line of email inquiries regarding this RFP must read: 'TEMPORARY STAFFING SERVICES RFP'.

Responses by BERS to all substantive inquiries (unidentified as to source of the inquiries) will be posted to BERS' website at https://www.bers.nyc.gov/site/bers/notices/requests-for-proposals.page no later than June 17, 2021. In addition, should any revisions or amendments to the RFP need to be issued, these will also be posted to BERS' website in advance of the RFP response Due Date.

Only written responses by BERS to written questions submitted by email shall be considered official communications regarding this RFP. Respondents should not rely on any representations, statements, or clarifications not made in either this RFP, BERS' written response to questions, or formal addenda to this RFP, if any.

Note - Except as noted above with respect to the Agency's designated contact e-mail address for this RFP, there shall be no communication concerning this RFP between any prospective or responding vendor and:

1. Any member of BERS' Board of Trustees or their staff members;
2. Any employee of BERS; or
3. Any persons in a perceived position to influence decisions of BERS at any time during the process, and until contract award.

Direct communication with those persons referenced above, either in person, writing, or by phone in regard to these specifications, the RFP response, or the eventual awarding of the contract (should a contract ultimately be awarded), shall result in the disqualification of the respondent.

2. SUMMARY OF THE REQUEST FOR PROPOSALS

2.1 Purpose of RFP

The Agency is seeking appropriately qualified vendors to provide temporary staffing services to support BERS in its daily operations. See Sections 3 and 4 of this RFP for details.

2.2 Summary of Key Dates

- RFP Issuance: June 7, 2021.
- Questions will be accepted via email from vendors through 5PM EDT on, June 21, 2021.
- BERS will respond to vendor RFP questions by 5PM EDT on June 28, 2021.
- Proposals (submitted in PDF format via email) due at BERS by no later than: 5PM on July 6, 2021.

2.3 Project Duration

The initial contract term will be for three (3) years, with two (2) options to extend for an additional one (1) year each.

2.4 Proposer Minimum Qualifications

All proposals received on or before the proposal due date and time via the method specified in the RFP will be evaluated to determine whether they meet the following Minimum Qualifications:

2.4.1 Proposer must have a minimum of three (3) years' experience in providing temporary employment services to at least (3) large government or not for profit or for-profit organizations who have at least 1,000 employees.

2.4.2 Proposer must provide financial statements demonstrating that they are financially stable and have a minimum annual revenue totaling $3,000,000 for each of the last three fiscal years.

2.4.3 The selected Proposer must be found by BERS to be a responsive and responsible vendor.

2.4.4 Proposals from individuals will not be accepted.

2.5 Proposer Presentation

Based upon the RFP responses, select proposers may be invited to give a presentation to BERS at BERS' discretion. The purpose of the presentation is to allow proposers to provide a demonstration of capabilities to service BERS and to allow candidates to answer general questions about their proposals.

3. OVERVIEW

3.1 BERS Overview

The Board of Education Retirement System is an approximately 125-person Agency responsible for providing pension services to designated employees of the NYC Department of Education who are not eligible to participate in the New York City Teachers' Retirement System (NYCTRS). In addition, membership in BERS is open to designated employees of certain other covered employers, such as the New York City School Construction Authority. BERS was chartered in 1921 and is one of five municipal pension systems within the City of New York.

BERS has approximately 55,000 active and retired members and over 100,000 unique membership case files. BERS offers both a defined benefit (traditional pension) plan called the Qualified Pension Plan (QPP) and a defined contribution plan known as the Tax Deferred Annuity (TDA).

3.2 Project Overview

BERS has previously engaged between 20- 30 temporary employees daily, who were classified as administrative and clerical workers. BERS requires temporary workers to work on assignments including, but not limited to, those in paralegal services, archival records management, customer service/front desk reception, call center operation and pension member services. Other fields include finance and accounting, information technology, investment strategy and data analysis. However, BERS reserves the right to change

the requested number of employees, their days of service, or number or hours worked. (See Exhibit 2, Job Descriptions).

BERS requires the services of a staffing agency to support in the identification, selection, management, and payment of qualified individuals to serve BERS in a temporary capacity in a wide variety of disciplines.

The Proposer shall provide administrative staff who meet the minimum professional and educational, qualifications, as defined in requests made by BERS. Alternatively, the Proposer shall facilitate the onboarding and placement of BERS-sourced candidates.

4. SCOPE OF SERVICES

4.1 The selected Proposer will be responsible for placement of both BERS and Proposer- referred candidates. For each prospective candidate, the Proposer must:

4.1.1 For Proposer-referred candidates, provide resumes of available qualified individuals to perform the services requested by BERS. Resumes must reflect BERS' requested credentials or qualifications, but may also include additional credentials. For each Proposer-referred candidate, the Proposer must advise BERS, in writing, of the hourly pay and not-to-exceed hourly billing rates. For each BERS-sourced candidate, the Proposer must confirm the not-to-exceed hourly billing rate in writing.

4.1.2 Maintain an online system to manage and process the placement, onboarding, timekeeping, and payroll of candidates working at BERS. The Proposer's online system shall also process billing and earnings inquiries for the current fiscal or calendar year and be capable of generating reports regarding any of the foregoing in response to ad-hoc requests made by BERS. Additionally, this system shall ensure BERS complies with applicable City, State and Federal labor laws, including those related to wage and hour requirements.

4.1.3 Provide an explanation of any medical and retirement benefits offered to candidates. If medical or retirement benefits are being offered, this must be indicated on the Pricing Form included as Attachment K to this RFP. A Proposer may choose to submit two Pricing Forms, one that includes the provision of benefits and one that does not, in accordance with Paragraph 1.2 of this RFP. All email attachments must be clearly labeled.

4.1.4 Work with BERS to fingerprint candidates and perform a background check for the last (3) years of each candidate's employment history.

To fingerprint candidates, the Proposer shall use the New York City Department of Education's (NYC DOE) Personnel Eligibility Tracking System (PETS). The background check requires that candidates complete the NYC DOE's Moral Questionnaire (attached as Exhibit 1), available through the Applicant Gateway System in NYCAPS.

Additionally, the background check requires the Proposer to verify the highest educational degree obtained, as indicated on a candidate's resume, in addition to the existence of required certifications or licenses. The Proposer must report all negative findings to the BERS Human Resources Department in writing, which will take appropriate action. For the purposes of this RFP, a background check includes having previous employers respond to

the following questions:

- While in your employment , did your office reprimand the applicant for unprofessional behavior?
- Did you discharge or require the applicant to resign for cause? Did you proffer charges against the applicant?
- Did the applicant resign as an alternative to facing charges or dismissal? (Explanations must be provided if these answers are in the affirmative.)

The Proposer shall notify BERS in writing upon the completion of the candidate's fingerprinting and background checks.

4.1.5 For Proposer-referred candidates, the Proposer shall interview candidates with the appropriate qualifications, as requested by BERS. Interviews may be conducted in-person at the Proposer's site as part of an initial prescreen or via another type of media, at the option of BERS. If the candidate passes the Proposer's prescreen, candidates shall be forwarded to BERS for further consideration and/or additional interviews.

4.1.6 Require the candidate to begin his or her assignment within a reasonable time, not to exceed 3 weeks, of their selection by BERS.

4.1.7 After the assignment begins, pay the employee and all applicable payroll taxes, make all applicable payroll withholdings and payments in accordance with all federal, state, and city laws and in accordance with Generally Accepted Accounting Principles. Proposers shall detail their plans for distributing employee wages. Employees shall be paid on a weekly basis.

4.1.8 Upon request, provide written reports and data to BERS, including, but not limited to, services provided, itemization and summaries of the candidates assigned, their titles, days worked, billable hours, and fees invoiced and paid by vendor.

4.2 Neither current nor retired BERS employees, nor any retired New York City employees who availed themselves of any early retirement incentive applicable to any retirement system of the City or State of New York can serve as temporary employees.

4.3 Vendors must not offer consultants an assignment that violates NYCDOE's "Conflict of Interest Rules." For complete rules see Chancellor's Regulation C-110 at: https://www.schools.nyc.gov/about-us/policies/chancellors-regulations.

4.4 At the end of the contract, the Proposer must timely and expediently transfer consultant records to the new named vendor at no additional cost to BERS.

4.5 Provide exceptional customer service and timely responses to inquiries from BERS personnel and staff. Proposers must provide email and phone support Monday through Friday, including non-federal holidays from 8:00 a.m. – 5:00 pm. Calls and emails from BERS offices and referrals must be returned within 24 hours (one business day). Support must include confirmation of faxes received.

4.6 Selected candidates may be asked to report to work at multiple BERS sites. Currently, there are two (2) BERS locations:

65 Court Street, 16th Fl.	55 Water Street, 50th Fl.
Brooklyn, NY 11201	New York, NY 10041

4.7 The Proposer shall notify the Contract Manager of any necessary stop- payments 24 hours *before* any stop-payment action is initiated.

4.8 The Proposer must provide BERS with written reports regarding billing on a quarterly and ad hoc basis, upon written request from BERS. The Proposer must keep data available for at least five (5) years after last date or employment by the vendor.

5. FORMAT AND CONTENT OF RFP RESPONSE

Proposals must provide all of the information outlined below. Vendor proposals should be concise and omit any extraneous and/or non-relevant materials. Responses will be evaluated on the basis of content and quality, not length.

5.1 Response Format

Vendor RFP responses must be delivered by no later than the due date and time designated in this RFP as follows:

- In PDF format
- Emailed to **BERSProcurement@bers.nyc.gov**
- Email subject line: "In response to BERS RFP #2021-01 for Temporary Staffing Services. Responses received in any other format or by any other method will not be accepted. Responses received after the designated due date and time will not be accepted.

BERS will return emails to every responding vendor acknowledging receipt of proposal.

5.2 Response Content

In addition to the supporting attachments contained herein, proposals must include the following sections and content in the following order:

5.2.1 Program Plan/Narrative

The Program Plan must be a clear, detailed, rational and concise description of how the Proposer's program will provide the services required in the Scope of Services in Section 4, above. It should show a clear understanding of the needs noted in this RFP and demonstrate how your plan will meet the goals and objectives of this particular RFP. The proposal should also include how you will assess and report your success in providing these services. In addition to a plan for providing the services required in Section 4, Proposals must include:

- Details on employee recruitment, including the Proposer's employment verification techniques as required by the Scope of Services, Section 4, above. Specify any other methods that will be used to build a pool of candidates whose skills and qualifications match those requested by BERS.
- The skills and qualifications of employees the Proposer can currently source.
- For Proposer-sourced candidates, the lead-time between the Proposer's receipt of BERS's request and subsequent presentation of a qualified candidate's resume.

- A detailed timeline, including the number of business days, required to complete the registration processes for both Proposer and BERS-sourced candidates. The selected Proposer must provide detailed written instructions on these registration processes that can be distributed to candidates. The Proposer must also include a name, telephone number, fax number and email address that BERS can use to contact the Proposer for support.
- An explanation of how data will be managed and reported in accordance with the requirements set forth in Section 4.

5.2.2 Organizational Capacity

In this section, provide evidence of adequate human, organizational, technical, and professional resources and abilities to meet the needs of this RFP, including, but not limited to, a description of the proposed Temporary Staffing Services Team providing these services, describing their roles, with detailed resumes and an organizational chart.

5.2.3 Demonstrated Experience:

In addition to the information submitted to meet the Minimum Qualifications required in Section 2.4, above, the Proposal shall include:

- A description of all prior background and experience in providing these specific or related services.
- Detail any experience working with public New York City agencies, pension systems or organizations similar in size to BERS. Include a list of all New York City contracts for similar services held by your organization within the last five (5) years, specifying the dates during which the contract was in effect and a short description of the services provided.
- Three (3) letters of references on company letterhead from organizations that have paid the Proposer directly for its services. Each reference must state the date(s), location(s), and description of the service(s) provided and include contact information.

5.2.4 Pricing/Charges:

Proposers must submit a line item budget for the services to be provided. The line-item budget must include all of your costs associated with the services in your proposal for which you will be charging BERS and service fees associated with the accounts. Please refer to the Pricing/Budget Forms included as separate Word/Excel file(s). The Proposer shall clearly state what assumptions, if any, are made. BERS reserves the right to request that vendors provide additional cost information should that be required for BERS' evaluation of proposals received.

6. PROPOSAL EVALUATION

All proposals received by BERS will be reviewed to determine if they meet all of the submission requirements and Minimum Qualifications outlined in this RFP. Proposals meeting these requirements will be evaluated and rated by an Evaluation Committee applying the evaluation criteria below. BERS reserves the right to conduct site visits to verify facility or other information contained in a proposal and may require a Proposer to make a demonstration/presentation of their services or submit additional written material in support of a proposal.

Proposers must address all the requirements set forth in the RFP. The Evaluation Committee will choose the vendor that most closely satisfies the requirements of the RFP. One (1) Proposer will be selected to provide the requested services.

6.1 Evaluation Criteria

The scoring table (below) will be used to evaluate each submitted proposal. The same criteria listed for each category must apply for each proposal where indicated. The closer a proposal is to achieving the Desired Characteristics, the more points it will receive in each related Response Category. **The Response Categories are listed in order of relative importance.**

RESPONSE CATEGORY	DESIRED CHARACTERISTICS	PERCENTAGE
Program Plan/Narrative	Responsiveness to the requirements detailed in Sections 4 and 5 of this RFP. The program plan is clear and provides all services necessary to verify qualifications of prospective professionals, process applicants, pay consultants in a timely manner, meet payroll obligations, manage referrals, provide reporting capabilities to track and manage individuals working at multiple BERS locations. The program plan ensures compliance with Federal, State and City laws. The Program Plan shows that that Proposer works with integrity, is expeditious, and transparent in its business practices.	30%
Pricing/Charges	Proposers must provide a fixed fee for the proposed services. BERS will consider the proposed terms (payment and other) and to what extent the proposal provides value to BERS with respect to total fees.	30%
Demonstrated Experience	Demonstrated successful experience providing employment services in a public New York City agency, pension system or institution of similar size.	20%
Organizational Capacity	Strong evidence that the Proposer has the technical and human resources to provide the employment services indicated in this RFP, including an organizational chart and the resumes of key personnel who demonstrate capacity to fulfill BERS' requirements as set forth in the RFP.	20%

7. ADDITIONAL VENDOR INFORMATION

7.1 RFP Terms & Conditions

All contracts resulting from this RFP shall be subject to the attached Terms and Conditions (Attachment D – BERS Terms and Conditions).

By submitting a written RFP response, Proposers acknowledge that they are in agreement with all the terms and conditions presented in this RFP, its content and exhibits, and any addenda that may be issued

to the RFP. For any term or condition to which the Proposer wishes to question or take exception to, the

vendor shall in its proposal specifically identify the language for which an exception is made and present the question or proposed replacement language. BERS will consider any proposed replacement language to be submitted for clarification only and the proposer agrees its response will not be considered by BERS to be contingent upon BERS's acceptance or rejection of such proposed language.

7.2 Incurring Costs

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

7.3 Proposal Acceptance, Rejection, Negotiations

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

Beyond the right to reject any/all proposals, BERS reserves the right to: (i) accept any proposal as submitted without negotiations; (ii) accept or negotiate with all proposals submitted which fall within a competitive range; (iii) require revisions to, corrections of, or other changes to any proposal submitted as a condition to its being given any further consideration; (iv) select for negotiations only the overall best proposal or alternate submitted, as determined by BERS; (v) negotiate with one or more respondents in any manner it deems fit, (such negotiations may be concurrent or sequential as BERS determines). No respondent shall have any rights against BERS arising at any stage of the solicitation from any negotiations that take place, or from the fact that BERS does not select a proposing vendor for negotiations.

7.4 Contract Award, Term, and Termination

The New York City Board of Education Retirement System reserves the right to award a contract to a respondent other than the respondent offering the lowest overall cost. Rather, while cost is always an important consideration, any contract resulting from this solicitation shall be awarded to the qualified proposer whose proposal has been determined by BERS to offer the best overall value and be most advantageous to BERS, based on the evaluation criteria set forth in this RFP.

Should this RFP process result in BERS selecting and engaging a vendor, the term of contract with the selected vendor will be **three (3) years with two (2) options to extend for an additional one (1) year each**.

Any contract resulting from this RFP shall be signed by the vendor within a reasonable time upon receipt, which period shall not exceed 30 days. Thereafter the vendor will be deemed delinquent, at BERS' option, the prospective contract may be voided. The contract award shall be subject to the following conditions, where applicable. They are not required to be part of a vendor's proposal submission unless specified below.

- Completion and submission of an appropriate Office of Equal Opportunities form.
- Enrollment in the NYC Mayor's Office of Contract Services PASSPort (Procurement and Sourcing Solutions Portal
- Completion and submission of the appropriate VENDEX Questionnaires and review of such Questionnaire by the Department of Investigation
- Vendor should be on file with the New York State, Division of Corporations, State Records & UCC

- Completion and submission of a Doing Business Data Form (Attachment I). **Note that this form should be submitted at the time of proposal and submitted again at the time of award.**
- Completion and submission of the Affirmation Sheet (Attachment F).
- Completion and submission of Iran Divestment Act Compliance Rider for New York City Contractors (Attachment H)
- Submission of appropriate Certificate(s) of Insurance as required under the terms of the contract.

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

7.5 Type of Contract Payment

This contract will be a requirements contract. **Requirements agreements are not commitments to purchase. Only a purchase order issued by a BERS office constitutes such a commitment.**

The estimated contract award for a requirements contract is based upon BERS' estimated requirement for that service over the contract period. BERS may purchase all, none, part, or more than the estimated quantities identified in the pricing form (Attachment K).

7.6 Insurance and Other Requirements

The selected vendor will be required to provide proof of insurance on the following:

The Temporary Staffing Services Team shall maintain the following insurance policies, covering the activities of its services in response to this RFP:

a. Commercial general liability in the amount of at least **$1,000,000** per occurrence for bodily injury, including death, and property damage and at least **$2,000,000** in the aggregate;
b. Personal and advertising injury in the amount of at least **$1,000,000** unless waived in writing by the Executive Director or his/her designee(s);
c. Professional Liability Insurance in the amount of at least **$2,000,000** per claim
d. Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance;
e. *Commercial Automobile Liability Insurance.* If vehicles are used in the provision of services, the Contractor shall provide Commercial Automobile Liability Insurance in a combined single limit of at least **$1,000,000** for each accident for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this Contract.

The Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees are additional insureds under the Temporary Staffing Services Team's commercial general liability policy described above.

For further details, please see Attachment J: BERS Standard Insurance Provisions

7.7 Security Clearance

All candidates are required to undergo the BERS's Security Clearance Procedures and be cleared by the Designated Security Clearance Office, the Office of Personnel Investigation (OPI), located at 65 Court Street, 2nd Floor, Brooklyn, NY 11201. The Security Clearance Procedures, which includes fingerprinting by the NYCDOE, require a fee (currently $135.00/person). This fee is subject to increase at the DOE's sole and absolute discretion with or without notice. Vendor must consider the security clearance requirement and fee when preparing the proposal since none of the costs associated with the security clearance procedures compliance will be paid by the NYCDOE separate to and apart from contract rates.

EXHIBIT 1

Department of Education
Dennis M. Walcott, Chancellor

The New York City Department of Education

Division of Human Resources & Talent
65 Court Street, Brooklyn, New York 11201

Moral Questionnaire

It is the policy of the Department of Education of the City of New York to provide educational and employment opportunities without regard to race, color, religion, creed, ethnicity, national origin, alienage, citizenship status, age, marital status, partnership status, disability, sexual orientation, gender (sex), military status, prior record of arrest or conviction, except as permitted by law, predisposing genetic characteristics, or status as a victim of domestic violence, sexual offenses and stalking, and to maintain an environment free of harassment on any of the above-noted grounds, including sexual harassment or retaliation.

You must answer "Yes" or "No" to ALL of the following questions. If your answer to any of these questions is "Yes" – an explanation should be entered in the space provided for each question.

Question No.	
1	Have you ever been convicted of or pled guilty or no contest to any offense in this state or elsewhere? (Note: You are not required to disclose offenses that have previously been dismissed or sealed.) ☐ Yes ☐ No Comments
2	Are there any criminal actions pending against you in any state or federal court/forum/jurisdiction? ☐ Yes ☐ No Comments
3	Have you ever been placed on any state registry as a sex offender? ☐ Yes ☐ No Comments
4	Have you ever been disciplined or terminated by a vendor under contract to do business with the NYC Department of Education? ☐ Yes ☐ No Comments
5	Have you ever been suspended for any period of time by an employer? ☐ Yes ☐ No Comments
6a	Has a Family Court ever found you guilty or substantiated that you abused or neglected a child? ☐ Yes ☐ No Comments
6b	Are you currently in arrears for child support? ☐ Yes ☐ No Comments
7	Have you ever been terminated (fired) from a job? ☐ Yes ☐ No Comments

8	Have you ever been denied employment after undergoing a background check or investigation? Comments	☐ Yes ☐ No
9	Have you ever been forced/ asked to resign from a job in lieu of termination? Comments	☐ Yes ☐ No
10a	Has an employer ever filed charges against you during your course of employment? Comments	☐ Yes ☐ No
10b	Were you found guilty of the charges? (Note: If you answered "No" to question 10a, please answer "No" to question 10b.) Comments	☐ Yes ☐ No
11	Have you ever had a professional certificate or license denied, revoked or suspended? (Note: This does not include a driver's license.) Comments	☐ Yes ☐ No
12	Have you ever applied for a civil service position, such as police officer or a federal, state, city or local agency position, and been notified that you did not qualify? Comments	☐ Yes ☐ No
13	Have you ever had a teaching license or certificate denied, revoked or suspended by any state or local Education Agency, Board or Department? Comments	☐ Yes ☐ No
14	Have you ever received an unsatisfactory rating or evaluation for your work as a pedagogue? (Note: If this question is not applicable to you, please answer "No.") Comments	☐ Yes ☐ No
15	Have you ever been discontinued or terminated from a teaching position during your probationary period? (Note: If this question is not applicable to you, please answer "No.") Comments	☐ Yes ☐ No
16	Have you ever received a discharge from the military other than under honorable conditions? Comments	☐ Yes ☐ No

You must answer all the questions before you can submit your application. **Falsifying an employment application is a punishable offense under the Penal Law of New York State.**

Applicant Signature

Today's Date

EXHIBIT 2

EXHIBIT 2 - JOB DESCRIPTIONS

The following is a non-exhaustive list of titles that may be requested by BERS:

Accountant
Under supervision, performs professional accounting work of moderate difficulty and responsibility internally or in conducts field audits and investigations; works independently or with others in executing responsible accounting assignments following prescribed rules of procedure. Conducts an audit program; examines books and personnel and timekeeping records; analyzes data; prepares work papers and reports on findings setting forth criteria, conclusions and recommendations. Performs audit follow-up tasks, e.g., reviews reports and requests for status update; maintains file on each audit; coordinates implementation of audit recommendation with specific agency and other governmental offices; monitors computerized tracking system; determines what additional follow-up is needed. Obtains documents (i.e., vouchers, warrants, contracts, budgets, time cards) from agency and analyzes them. Uses computer to input and retrieve information. Performs difficult arithmetical computations. Maintains control of nominal and real accounts. Responds both orally and in writing to inquiries from clients, vendors and agency personnel. Prepares reconciliations and balances books/ledgers/journals. May administer a unit and/or supervise employees performing work of lower responsibility. Trains new employees assigned to the unit. In the temporary absence of a supervisor, may perform the duties of that position.

Bookkeeper
Performs computations and posts or compiles financial data as directed for accounting purposes, or for calculating balances, loans, or refunds. Posts to general ledgers and journals. Balances or adjusts accounts. Assists in examining invoices, claims, vouchers, payrolls, fee collection reports or applications for allowances, loans, transfers and refunds and verifies their accuracy by consulting supporting financial records and data. Prepares purchase orders, statements or bills. Processes cash receipts; performs bank reconciliations. Keeps records and makes reports as required. May deal with petty cash or imprest funds. May prepare required forms to enter data into a computerized system. May utilize manual and automated office systems.

Data Entry Clerk
Operate data entry equipment with alphabetic and numeric keyboard; enter, verify, update, correct and retrieve information; enter information with speed and accuracy. Use the computer to prepare letters, reports, forms, or other material from rough draft, corrected copy, or voice recording. Review and correct drafts for compliance with originals. Edit using knowledge of grammar, punctuation and spelling. Enter and retrieve data on computer terminals. Duties may include verifying data and preparing materials for printing. May perform other clerical duties as assigned.

Administrative Assistants
Must provide high-level administrative support by conducting research, preparing statistical reports and handling information requests in addition to performing clerical functions such as preparing correspondence, receiving visitors, arranging conference calls and scheduling meetings. May also train and supervise lower-level clerical staff. Knowledge of office administration and management; proper grammar, punctuation and spelling; business communications and ability to take notes is necessary. May act as immediate supervisor's personal representative in dealing with public and in routine contacts with other executives; perform special assignments, studies and routine administrative functions as specifically

directed; screen incoming correspondence, refer to appropriate staff, and follow up to assure timely response. Perform related duties as required.

File Clerks
File correspondence, cards, invoices, receipts, and other records in alphabetical or numerical order or according to the filing system used. Locate and remove material from file when requested. Must be able to follow oral and written instructions.

Paralegal
Under supervision, assists and receives training from attorneys, formal referees and higher level paralegal aides in the management of cases through various stages of legal proceedings; may draft legal papers for review by higher level staff and/or attorneys; independently performs routine paralegal tasks. Performs one or more of the following types of paralegal duties: Assists in preparing and processing subpoenas, summonses, motions, affidavits, legal notices, closing binders, mortgage loans, other project closing documents, and/or other forms and papers which relate to legal proceedings and transactions. Assists in reviewing, updating and maintaining case files, log books and attorneys schedules, including the court calendar or administrative hearing calendar. May assist in assembling tax and lien data from files and other official records. Collects, assembles and reviews routine data and secures various forms and documents relating to legal proceedings and transactions; may contact court clerks, title abstract specialists, process servers, city marshals and others in order to request and secure necessary forms, dates and legal documents. Assists in reviewing background data to be used in preparation of agency contracts and/or in monitoring contractor compliance. Locates and retrieves court decisions, statutes, regulations, and other items of legal research. Assists in performing routine legal research.

Attorney
Under supervision, with some latitude for independent judgment and unreviewed action and decision, performs legal work, including the following: Researches and prepares routine cases for trial and argues them before courts or quasi-judicial bodies. May assist in research preparation and trial of complex cases. Performs legal work involving issues of fact and questions of law, including tax law. Appears in court and at administrative hearings to argue motions, writs and petitions and other similar matters. Prepares briefs, motions, legal opinions, affidavits, memoranda and other legal papers. Negotiates, drafts and processes contracts, conveyance documents, loan documents and other agreements, and attends real estate closings. Recommends statutory and regulatory revisions related to agency issues. Drafts and reviews proposed legislation, rules and regulations. Determines the advisability of presenting witnesses, admissibility of types of evidence and matters of legal strategy. Confers with subject matter specialists, technical experts, and other attorneys, including counsel for litigants. Recommends settlements and adjustments. Conducts legal investigations, holds informal hearings, and examines prospective witnesses. Advises on legal aspects of enforcement and administration of acts, rules, laws, and regulations. Determines which legal and/or other questions require more legal analysis or review, and refers them with appropriate memoranda to the proper authority. May assist in training and supervising the activities of subordinate staff. Guides, supervises and/or reviews work of support staff to ensure completeness and compliance with agency policy and professional standards. May act as liaison with operational staff within the agency.

Mail Clerks, Except Mail Machine Operators and Postal Service
Prepare incoming and outgoing mail for distribution. Duties include time stamping, opening, reading, sorting, and routing incoming mail; sealing, stamping, and affixing postage to outgoing mail or packages; and keeping necessary records and completed forms.

Public Relations Manager/Public Information Officer
Plan and direct public relations programs designed to create and maintain a favorable public image for employer or client; or if engaged in fundraising, plan and direct activities to solicit and maintain funds for special projects and nonprofit organizations. Establish and maintain effective working relationships with government officials and media representatives and use these relationships to develop new business opportunities. Write interesting and effective press releases, prepare information for media kits and develop and maintain company internet or intranet web pages. Develop and maintain the company's corporate image and identity, which includes the use of logos and signage. Respond to requests for information about employers' activities or status. Draft speeches for government officials, and arrange interviews and other forms of contact for them. Evaluate advertising and promotion programs for compatibility with public relations efforts.

Call Center Clerk
Operate telephone business systems equipment to relay incoming, outgoing, and interoffice calls. May supply information to callers and record messages.

Computer Operators
Monitor and control electronic computer and peripheral electronic data processing equipment to process business data according to operating instructions. Follow and understand instructions for development of final copy materials on word processing/computer equipment. Proofread and correct documents. Must have knowledge of business English, spelling, grammar, punctuation and arithmetic, knowledge of Office Suite software packages and ability to learn within a reasonable time. May develop graphs, spreadsheets, charts, web pages, etc.

Computer Support Specialists
Provide technical assistance to computer system users. Answer questions or resolve computer problems for the agency in person, via telephone or from remote location. May provide assistance concerning the use of computer hardware and software, including printing, installation, word processing, electronic mail, and operating systems. May enter commands at a computer terminal and set controls on computer and peripheral devices. Monitor and respond to operating and error messages. Must have advanced computer and software skill/knowledge including skills in multiple software.

Investment Analyst
This class of positions encompasses the performance of professional work involving the investment of pension funds in publicly and privately traded securities, including fixed income, common stock, preferred stock, real estate and private equity securities. All personnel perform related work and in the absence of an immediate supervisor, may perform duties of that position. Under general supervision, serves as a staff assistant in various phases of work in connection with investment of funds in publicly and privately traded securities; assists in studies of the general economic and industrial trends and their bearing investments; engages in related research and statistical analysis. Analyzes and evaluates prospective investment offerings by private or governmental corporations for public purchase. Verifies financial reports are complete and accurate. Verifies that investments comply with all terms and conditions of investment

agreements; analyzes and reports discrepancies to supervisor and assists in the creation of any amendments to investment agreements as necessary. Reviews yields of comparable securities and determines market evaluations of corporate or government issues. Reviews attributes of equity securities to track relative risk and return projections. In cooperation with high-level agency executives, determines cash balances available for investment; recommends investment of the balances of the funds based on cash needs. Assists in studies of current economic trends, their effect on prevailing interest rates and the financial stability of companies involved; researches available publications, services, etc. on bond market conditions and the statutes governing investments of public funds. When directed, contacts various brokers and consummates investment transactions at approved prices.

ATTACHMENT A

PROPOSER'S COVER SHEET
RFP#: 2021-01 – TEMPORARY STAFFING SERVICES

Company Name: _____

Address: Administrative Office:

_____

Address: Service/Operations for New York City:

_____

Federal Tax Identification #: _____

Contact Name: _____

Title: _____

E-mail Address: _____

Phone: (_____)_____ Fax: (_____)_____

Year Firm Founded: _____

Year firm began serving institutional clients: _____

Proposer's Name: _____

Proposer's Signature: _____

ATTACHMENT B

NO PROPOSAL RESPONSE FORM
RFP#: 2021-01 – TEMPORARY STAFFING SERVICES

Proposal Opening Date:

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

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

All proposers who respond with a "No Response" response or choose not to propose, are requested to provide the information requested below and return this form in time for the proposal opening.

REASONS FOR NOT PROPOSING AT THIS TIME:

_____

_____

PROPOSER NAME AND ADDRESS:

_____

_____

_____

_____

SIGNED:_____ **TITLE:**_____ **DATE:**_____

PROPOSAL TITLE: TEMPORARY STAFFING SERVICES

ATTACHMENT C - BERS SAMPLE CONTRACT

AN AGREEMENT TO PROVIDE TEMPORARY STAFFING SERVICES TO THE BOARD OF EDUCATION RETIREMENT SYSTEM

AN **AGREEMENT**, entered into as of the ___day of _____, by and between the **BOARD OF EDUCATION RETIREMENT SYSTEM OF THE CITY OF NEW YORK** ("BERS"), with principal offices at 65 Court Street, Brooklyn, New York 11201, and **_____.** (the "Contractor"), with principal offices at _____ to provide temporary staffing services.

W I T N E S S E T H

WHEREAS, BERS requires temporary staffing services to assist BERS in fulfilling its duties to its membership (collectively, "services"); and,

WHEREAS, in order to obtain the services**,** BERS publicly advertised and circulated a Request for Proposals (RFP 2021-##) (the "RFP") entitled "Temporary Staffing Services"; and

WHEREAS, BERS thereafter received _____ responses, including a proposal from the

Contractor herein, and, upon review, the proposal submitted by the Contractor herein was deemed qualified and responsive to the RFP; and

WHEREAS, the evaluation committee has recommended to BERS' Board of Trustees that the Contractor's services be retained by the Board of Trustees'; and

WHEREAS, the Board of Trustees desires to enter into an agreement (the "Agreement") with the Contractor to provide the within described services by _____ in an amount not to _____; and

WHEREAS, the BERS Board of Trustees, by resolution adopted on _____, a copy of which resolution is annexed hereto and made a part hereof as **Attachment A**, authorized the Executive Director of the Board of Education Retirement System of the City of New York to enter into a contract with _____ ("_____" or "Contractor") for the services described herein; and,

WHEREAS, the Contractor represents that it is ready, willing and able to provide the services as described herein;

NOW, THEREFORE, the parties hereto further agree as follows:

1. TERM OF THE AGREEMENT; RENEWALS

A. Original Period. The original term of this Agreement (the "Original Period") shall commence as of _____, and shall extend through and terminate on _____, unless renewed for one (1) or two (2) additional annual period(s) (the "Additional Period(s)") beyond such termination date, in accordance with the provisions of **Paragraph 1(B)** of this Agreement, or unless this Agreement is terminated

earlier pursuant to the terms and conditions hereinafter referred to.

B. Additional Period(s). The Board of Trustees may renew the term of this Agreement (the "Term") for one (1) or two (2) Additional Period(s) of one (1) year each, with the first Additional Period commencing on _____ and continuing through and until _____; and with the second Additional Period commencing on _____ and continuing through and until _____. The Executive Director shall have the sole discretion to exercise the Board of Trustees' decision to renew this Agreement for each Additional Period. If the Executive Director opts to renew this Agreement for one or both Additional Period(s), he/she shall provide written notice to the Contractor of each such decision at least thirty (30) calendar days prior to the start of each respective Additional Period; ***i.e.***, by not later than the close of business on _____ to renew this Agreement for the first Additional Period, and by not later than the close of business on _____ to renew this Agreement for the second Additional Period. If the Executive Director or his/her designee(s) opts not to renew this Agreement for the first Additional Period, such action shall automatically cancel the Executive Director's discretion to renew this Agreement for the second Additional Period as well.

C. The provisions of **Paragraph 1(B)** of this Agreement shall not be deemed in derogation of the Board of Trustees' right to cancel the balance of this Agreement during the Original Period or during either Additional Period pursuant to any of the other terms and conditions of this Agreement or as annexed hereto and made a part hereof as **Attachment C**, as such document is hereinafter incorporated into this Agreement or its Attachments.

D. Criteria for Additional Period(s). The Executive Director or his/her designee(s) shall conduct an annual review of the Contractor's performance under this Agreement and the availability of funds for the continuation of this Agreement before the notice deadline for exercise of each decision to renew this Agreement. The results of the mandated evaluation and the continued availability of funds shall be the basis for the decision by the Executive Director or his/her designee(s) whether or not to exercise the Board of Trustees' discretion to renew this Agreement for either or both of the Additional Period(s).

2. SCOPE OF WORK

A. "Services" shall describe collectively all of temporary staffing services, including the provision of temporary professional, managerial, administrative, fiscal, support and other activities as well as all supplies, equipment and materials that the Contractor furnishes, supplies, performs and/or delivers to, for, or and for the benefit of, BERS and /or its employees, agents and authorized representatives. The Contractor shall perform, furnish, provide, supply and/or deliver the Services in a timely and professional manner under the general supervision of the Executive Director or his/her designee(s) based on the services described and pricing specified in the Contractor's Statement of Work ("SOW") (**Attachment B)** and Request for Proposals ("RFP") (**Attachment D) ,** which Statement of Work and RFP are annexed hereto and incorporated herein.

B. The Contractor shall provide all services according to the quantities and prices as the Contractor and BERS have agreed upon in Contractor's approved SOW (**Attachment B)**. This Agreement is a non-exclusive requirements agreement for temporary staffing services designed to provide qualified staff primarily in the field of pension/retirement support for a finite period of time on behalf of BERS. BERS is not obligated to procure any services, or any minimum level of services. All decisions regarding whether to procure any services from the Contractor shall rest solely with BERS. The Contractor shall not provide any services for which it seeks payment unless BERS in writing requests the Contractor to provide the specified

services. This Agreement is effective upon the issuance of a Purchase Order.

C. The Contractor shall perform the activities and the tasks, and provide the deliverables specified in the SOW (**Attachment B**).

D. The Contractor shall assign competent and professional personnel to assume the responsibilities of positions not filled by BERS appointed or assigned personnel. The Contractor alone shall be responsible for their work and employment, as well as for their direction, discipline, compensation and benefits.

E. The Contractor shall provide all of the services described in this **Paragraph 2,** SOW (**Attachment B**), in a competent, professional and timely manner to the reasonable satisfaction of the Executive Director or his/her designee(s).

3. COST; PAYMENT

A. If the Contractor provides the services described in **Paragraph 2** of this Agreement, the SOW (**Attachment B**) in compliance with the terms, conditions and specifications of this Agreement, BERS will pay the Contractor in accordance with the pricing stated in the SOW**.** The cost to BERS shall be in an amount not to exceed _____; for the full Term of this Agreement, and contingent on the evidence of satisfactory Services.

B. Billing for services shall be in the form of detailed itemized invoices submitted monthly by the Contractor. BERS will not approve any invoice until all reports and/or deliverables previously requested shall have been received. All books, records, bills, reports or materials deemed necessary by BERS to substantiate the validity of any bills for services provided shall be made available for review. The Contractor shall support its invoices with time records, invoices of third parties, and other supporting documents. The Contractor's invoices submitted for payment must bear the certification of the Executive Director or his/her designee(s) that all of the goods and services for which payment is demanded have been provided in a satisfactory manner. If the Contractor shall be unable to provide reasonable evidence supporting any of its expense items requested for payment, BERS shall not be required to make any payment(s) with respect to such items and may, if such payment has already been made, require the Contractor to refund the amount of any such payment.

C. Any provision in the Agreement notwithstanding, BERS shall only make payment for services provided and only upon submission of substantiated invoices in a form satisfactory to BERS. Such payment shall be made by BERS no later than thirty (30) days after submission of substantiated invoices by the Contractor. The maximum amount payable on an invoice shall be limited to the amount actually expended or incurred by the Contractor for each period billed as evidenced by the substantiating documentation. No expenditures shall be incurred in the performance of this Agreement that are not ordinary, necessary and reasonable to its performance or which are contrary to law, public or BERS policy.

D. This Agreement and all consideration hereunder are subject to pre-audit and post-audit by BERS, the Comptroller of the City of New York (the "Comptroller") and any designee of BERS or the Comptroller. No audit by BERS shall be binding upon the Comptroller.

E. **No Fee Charging**. The Contractor shall not charge fees to, nor seek any payment and/or compensation of any kind whatsoever from, BERS employees, or members for the services that the Contractor provides under this Agreement. The same shall apply to the Contractor's employees, consultants, consultant employees, sub-consultants, sub-consultant employees, subcontractors and subcontractor

employees.

F. Guarantee of Personal Services. The Contractor shall provide the personal services of those persons and entities named or described in the SOW (**Attachment B**) and such other managers and staff employees as are necessary to fulfill all terms and conditions of this Agreement as specified in a Purchase Order . The Contractor shall be responsible to ensure that heretofore described individuals and entities and all managerial and staff employees and subcontractors as are necessary, fulfill the terms, conditions and specifications of this Agreement. The Contractor is hereby prohibited from using anyone in substitution of the heretofore-described individuals and entities without the prior, express written authorization of the Executive Director or his/her designee(s), which written authorization will not be unreasonably withheld. The Executive Director or his/her designee(s) may reasonably limit the duration and scope of such authorization to any degree. Unauthorized use of a substitute for the heretofore described individuals and entities shall constitute a material breach of the Agreement by the Contractor, and such breach will void and nullify BERS' responsibility to make payments to the Contractor whether or not any of the Services have been rendered. If authorized, the Contractor must supply a substitute(s) of at least equal education, training, experience and competence who will be able to furnish the Services in a manner and timeliness at least equal to the said personnel. The Contractor shall exercise due care and diligence to screen and select all managers and staff personnel who provide any of the Services under this Agreement, i.e., such personnel must be certified, competent professionals. The Contractor shall supply all necessary supervision of its personnel.

4. USE OF BERS PREMISES; NO OTHER GAINFUL EMPLOYMENT WHILE IN CONTRACT SERVICE

The Contractor shall restrict its use of BERS premises, space, facilities, personnel, services, equipment, materials, *etc.*, to its performance of the Services under this Agreement or any other agreement or subcontract the Contractor may have with BERS. The Contractor shall not cause or allow the conduct of any other business, except for the Services and other matters connected with this Agreement, on BERS property or with BERS facilities, personnel, services, equipment, materials and so forth. The preceding two (2) sentences shall apply with equal force and effect to the Contractor's employees, agents, consultants, consultant employees, sub-consultants, sub-consultant employees, subcontractors and subcontractor employees.

5. CONFIDENTIALITY

A. The Contractor does hereby agree and covenant that any questionnaires and other forms, documents and/or work papers, which the Contractor and/or its consultants, sub-consultants and/or subcontractors use to elicit information pursuant to this Agreement from BERS administrators, employees, members, or members family members shall not contain any personally identifiable or traceable information, data, marks or images.

B. The Contractor and/or its subcontractors and subcontractor employees, if any, shall adhere in every respect to the law, BERS policy and terms and conditions concerning confidentiality of records. The Contractor shall submit to BERS any and all information and data that the Contractor, its consultants, consultant employees, sub-consultants, sub-consultant employees, subcontractors and/or subcontractor employees collect pursuant to this Agreement.

6. OWNERSHIP OR RELATIONAL CHANGES

Subsequent to execution of this Agreement, the Contractor shall be obligated to notify the Executive Director or his/her designee(s) in writing within ten (10) calendar days in the event of a change(s) in any of the following: **(A)** beneficial owners (including, without limitation, parent and over-parent entities), limited or general partners, silent or apparent partners, major shareholders (more than five percent stock ownership), elected or appointed officials, officers and/or directors of the Contractor; **(B)** subsidiary and/or affiliated entities that are directly or indirectly involved in the performance of this Agreement; **(C)** transfer payees or payment assignees; and **(D)** any relationship that might involve or create a conflict of interest.

7. INSURANCE REQUIREMENTS

A. Duty to Maintain Insurance. The Contractor shall not commence performing services under this Contract unless all insurance required by this Contract is in effect. The Contractor shall ensure continuous insurance coverage in the manner, form, and limits required by this Contract.

B. Types of Insurance Required. The Contractor shall maintain the following types of insurance indicated below. Where this Contract requires that insurance be "at least as broad as" a specified form (including forms issued by the Insurance Services Office (ISO)), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form contained in its policy provides coverage at least as broad as the specified form.

(1) *Commercial General Liability Insurance.* The Contractor shall maintain Commercial General Liability Insurance ("CGL") covering claims for property damage and bodily injury, including death, and personal and advertising injury that may arise from any of the operations under this Contract. Such CGL must:

a. be in the amount of at least **$1,000,000** per occurrence for bodily injury, including death, and property damage and at least **$2,000,000** in the aggregate, unless this is a construction contract and higher limits are required by the Department of Buildings pursuant to 1 RCNY section 101-08, in which case the limits of CGL must meet or exceed those limits required by the Department of Buildings.
b. provide coverage for personal and advertising injury in the amount of at least **$1,000,000** unless waived in writing by the Executive Director or his/her designee(s).
c. provide coverage that is at least as broad as the coverage provided by the latest edition of ISO Form CG 00 01.
d. be "occurrence" based rather than "claims made."
e. list the "the Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees" as additional insureds with coverage at least as broad as the latest edition of ISO Form CG 20 26.
f. not include an exclusion that is not included in the latest edition of ISO Form CG 00 01, unless such exclusion is approved in writing by the Board.

(2) *Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance.* The Contractor shall provide, and shall cause its subcontractors to provide, Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.

(3) *Commercial Automobile Liability Insurance.* If vehicles are used in the provision of services under this Contract, the Contractor shall provide Commercial Automobile Liability Insurance in a combined single limit of at least **$1,000,000** for each accident for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the

Commercial Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement ISO Form CA 99 48) and MCS-90.

(4) *Professional Liability Insurance.* Unless waived in writing by the Executive Director or his/her designee(s), if the Contractor is providing professional services under this Contract for which Professional Liability Insurance is commercially available, the Contractor shall maintain Professional Liability Insurance appropriate to the type(s) of such services in the amount of at least **$1,000,000** per claim.

a. Unless waived in writing by the Executive Director or his/her designee(s), the Contractor shall cause its subcontractors that provide professional services under this Contract for which Professional Liability Insurance is commercially available to maintain Professional Liability Insurance appropriate to the type(s) of such services in the amount of at least **$1,000,000** per claim.

b. The Board will accept occurrence or claims-made policies for Professional Liability Insurance. Claims-made policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

C. General Requirements for Insurance.

(1) *Insurance Policy Deductibles, Self-Insured Retentions, and Self-Insurance Programs.* Any deductibles or retentions in excess of **$5,000** shall be disclosed by the Contractor and shall be subject to advance written approval by the Executive Director or his/her designee(s). Any deductible or retention amounts elected by the Contractor or imposed by the Contractor's insurer(s) shall be the sole responsibility of the Contractor. The Contractor shall be permitted to provide insurance of any type required under this Contract by means of a self-insurance program (or make use of any self-insured retention)[1] *only* in the event (a) such program provides BERS and the City, including their respective officials and employees, with all rights that would be provided by traditional insurance required by this Contract including, but not limited to, the defense obligations that insurers are required to undertake in liability policies, and (b) such self-insurance program is approved in advance by the Executive Director or his/her designee(s). If the Contractor desires to provide any such insurance by means of a self-insurance program, the Contractor shall submit a statement satisfactory to the Executive Director or his/her designee(s), signed by a party authorized to bind the Contractor and acknowledged by a notary public, by which the Contractor (i) affirms that such self-insurance program provides at least the same level of coverage as required by this Contract, (ii) agrees to assume responsibility for satisfying all obligations of the self-insurance program if such program for any reason fails to do so, and (iii) provides BERS with the name and address of the office or official of its self-insurance program who is responsible for satisfying the self-insurance obligations. The foregoing requirements for advance approval include, but are not limited to, the Contractor's formation of, and/or participation in, any other alternative risk management arrangement(s) as a substitute for a traditional insurance policy(ies). In addition, the Contractor must provide the BERS Contract Manager with a written set of detailed rules and procedures for BERS and/or the City to file a claim(s) and to obtain coverage under any risk retention fund(s) and/or any other alternative risk management arrangement(s) including, but not limited to, any required claim form(s), contact information, and any information required to be submitted with a claim(s). The Contractor's rules and procedures for submitting a claim(s) and obtaining coverage under any risk retention fund(s) and/or any other alternative risk management arrangement(s) shall be subject to approval by the Executive Director or his/her designee(s). Approval of any proposed self-insurance program, other alternative risk management arrangement(s) and the rules and procedures for submitting a claim(s) and

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

obtaining coverage is at the sole discretion of BERS. As determined by the Executive Director or his/her designee(s),any unreasonable failure and/or refusal by the Contractor and/or its agent(s) to accept and process a claim(s) from BERS, the City and/or their agent(s) and/or any unreasonable disclaimer(s) of coverage by the Contractor and/or its agent(s) shall entitle BERS to deduct from any compensation due and owing to the Contractor the amounts, as determined by BERS and/or the City, of any and all resulting losses, damages, expenses (including, but not limited to, reasonable attorney fees), claims, demands, judgments, suits, allegations, liabilities, settlements and/or other costs that BERS and/or the City, including their respective officials and employees, shall incur regarding any affected claim(s) and/or denial of coverage. The foregoing provisions shall apply equally to any subcontractor(s).

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

(3) The Contractor shall be solely responsible for the payment of all premiums for all required insurance.

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

(5) Policies of insurance provided pursuant to this Contract shall be primary and non-contributing to any insurance or self-insurance maintained by BERS and the City.

(6) The Contractor may satisfy its insurance obligations under Contract through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(7) In his/her sole discretion, the Executive Director or his/her designee(s), may, subject to the approval of the Comptroller and the City Corporation Counsel, accept letters of credit and/or custodial accounts in lieu of the required insurance.

D. Proof of Insurance.

(1) For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) days of award of this Contract. ACORD forms are not acceptable proof of such insurance.

a. Form C-105.2, Certificate of Workers' Compensation Insurance;
b. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;
c. Form SI-12, Certificate of Workers' Compensation Self-Insurance;
d. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
e. Form DB-120.1, Certificate of Disability Benefits Insurance;
f. Form DB-155, Certificate of Disability Benefits Self-Insurance;
g. Form CE-200 – Affidavit of Exemption;
h. Equivalent or successor forms authorized by the New York State Workers' Compensation Board; or
i. Other proof of insurance in a form acceptable to BERS.

(2) For each type of insurance required by this Contract except for Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall submit within ten (10) days of award of this Contract or such other time as may be specified by the Executive Director or his/her Designee(s).

a. A Certificate of Insurance on a form acceptable to the Executive Director or Designee, a duly executed Certification of Insurance Broker or Agent and the endorsement or policy provision containing the required coverage as an additional insured and, if applicable, loss payee.

i. If the Certificate of Insurance form contains a space to indicate the "certificate holder," such space shall list: The Board of Education Retirement System of the City of New York, 65 Court Street, 16th Floor Brooklyn, NY 11201.

ii. The Certificate of Insurance form(s) evidencing CGL shall state: "The Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees are additional insureds" or similar language acceptable to the Executive Director or his/her Designee(s).
-OR-

b. A copy of the complete insurance policy(ies) as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time the Contractor shall submit a certified copy of the policy.

(3) The Contractor shall submit documentation confirming renewals of insurance to BERS prior to the expiration date of coverage of policies required under this Contract. Such documentation shall comply with the requirements concerning proof of insurance in paragraphs (1) and (2) above.

(4) The Contractor shall provide BERS and/or the City with a copy of any policy of insurance required by this Contract upon the demand for such policy by the Executive Director or the City Corporation Counsel.

(5) Acceptance by the Executive Director of proof of insurance does not excuse the Contractor from maintaining policies consistent with all provisions of this Contract (and ensuring that subcontractors maintain policies that are required under this Contract) or from any liability arising from its failure to do so.

(6) In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under Contract shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Board of Education Retirement System, Attn: Legal, 65 Court Street, 16th Floor Brooklyn, NY 11201, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

E. Miscellaneous.

(1) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under any insurance policy maintained in accordance with this Contract that is required to include BERS and the City as an additional insured and/or loss payee, the Contractor shall provide the insurer with timely notice thereof on behalf of BERS and the City, including their respective officials and employees. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees as Additional Insured [and, if applicable, Loss Payees]" and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007 and the Legal Department of the Board of Education Retirement System at 65 Court Street, 16th Floor, Brooklyn, NY 11201. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify BERS and the City, including their respective officials and employees, for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of BERS and/or the City, including their respective officials and employees.

(2) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Contract, the Contractor shall at all times fully cooperate with BERS and the City with regard to such potential or actual claim.

(3) The Contractor's failure to maintain any of the insurance required by this Contract shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by BERS or the City at any time.

(4) Insurance coverage in the minimum amounts required in this Contract shall not relieve the Contractor or its subcontractors of any liability under this Contract, nor shall it preclude BERS and/or the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Contract or law.

(5) Apart from damages or losses covered by Workers' Compensation Insurance, Employers' Liability Insurance, Disability Benefits Insurance, Commercial Automobile Liability Insurance, and Professional Liability Insurance, the Contractor waives all rights against BERS and the City, including their respective officials and employees, for any damages or losses that are covered under any insurance required under this Contract (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Contract.

(6) If the Contractor requires any subcontractor to procure insurance with regard to any operations under this Contract and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list BERS and the City, including their respective officials and employees, as an additional insured. For CGL, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

8. NON-LIABILITY OF BERS

A. The relationship of the Contractor to BERS shall be that of independent contractor. The Contractor and its employees, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself in accordance with such status, that it will neither hold itself out as nor claim to be an officer or employee of BERS or City of New York, that it will not make any claim, demand or applications to or for any right or privilege applicable to an officer or employee of BERS or the City of New York including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credits.

B. All personnel of the Contractor shall be within the employ of the Contractor only, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on BERS or the City of New York for the acts, omissions, liabilities, or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature, including, but not limited to, unemployment insurance, worker's compensation, disability benefits, social security, or, except as specifically provided in this Agreement, to any person, firm or corporation. Without limiting the foregoing, neither BERS nor the City of New York shall be liable for any payment made or any obligation incurred in connection with the discharge of any employee by the Contractor.

C. The Contractor shall be solely responsible for all injuries or death to its agents, servants, or employees or to any other person, or damage to any property sustained during its operations and work on the project under this Agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants or independent contractors.

9. INDEMNIFICATION AND RELATED OBLIGATIONS

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

B. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless BERS and the City, including their respective officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which BERS, the City, or their respective officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, contractors, or subcontractors in the performance of this Contract. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless BERS, the City, and their respective officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Contract's scope of services/scope of work. Insofar as the facts or law relating to any of the foregoing would preclude BERS, the City, and their respective officials and employees from being completely indemnified by the Contractor, BERS, the City, and their respective officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by law.

C. The Contractor's obligation to indemnify, defend and hold harmless BERS, the City, and their respective officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Contract, nor (ii) adversely affected by any failure on the part of BERS, the City, or their respective officials or employees to avail themselves of the benefits of such insurance.

10. TERMINATION OF AGREEMENT FOR THE BOARD'S CONVENIENCE

BERS shall have sole discretion to terminate this Agreement at any time for its convenience upon thirty (30) days prior written notice to the Contractor of BERS' intention to terminate this Agreement. Such termination may be for any reason or for no reason. After receipt of such notice, the Contractor must cease all work under this Agreement, unless otherwise directed in the notice. The Contractor will be entitled to payment for any goods and services provided up to the time of termination stated in such notice, provided that BERS first receives and approves an invoice. No claim for damages may be made or will be allowed to the Contractor because of such termination.

11. AFFIRMATION OF RESPONSIBILITY AND PAID TAXES

The Contractor affirms and declares that said Contractor is not in arrears to the City of New York upon any debt, contract or taxes and is not a defaulter, as a surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts except as stated in the affirmation pertaining to the foregoing which has been furnished to BERS.

12. INCORPORATION OF ATTACHMENTS; ORDER OF GOVERNANCE

A. The following Attachments are annexed to this Agreement, incorporated herein and made a part of this Agreement:

Attachment	Attachment Name
A	RESOLUTION: AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH _____ TO PROVIDE TEMPORARY STAFFING SERVICES TO THE BOARD OF EDUCATION RETIREMENT SYSTEM
B	CONTRACTOR'S STATEMENT OF WORK
C	BERS TERMS AND CONDITIONS
D	REQUEST FOR PROPOSALS

B. In the event of conflict between any Attachments incorporated herein by reference and this document, the following order of governance shall apply: first, **Attachment A**; second, this document; and third, **Attachment C;** fourth, **Attachment D**, and fifth, **Attachment B**.

13. BERS AUTHORITY

The supervisory and disciplinary authority of BERS, the Executive Director, and other BERS managerial employees over the staff, shall not be diminished in any manner nor to any extent whatsoever by this Agreement.

14. BERS APPROVAL

The Contractor does hereby acknowledge and agree that any and all exhibitions, performances, instructional services, materials and/or resources to be utilized in the performance of this Agreement not referenced in this Agreement, the SOW (**Attachment B**) shall be subject to the prior approval of the Executive Director or his/her designee(s).

15. NOTICES

Any notices or communications between the parties, that are required to be provided, or that the parties desire to provide, relating to the performance of this Agreement, shall be given in writing and shall be made by postage prepaid, registered or certified mail, return receipt requested, or by overnight delivery by Federal Express or by other reputable courier service, to the addresses set forth below.

BERS: 65 Court Street, Room 1603
Brooklyn, New York 11201
Attention: Sanford Rich, Executive Director

Contractor:

16. CONSULTANTS, SUB-CONSULTANTS AND SUBCONTRACTORS USED UNDER THIS AGREEMENT

This Agreement shall not create any relationship between BERS and any of the Contractor's consultants, sub-consultants and/or subcontractors. All claims, actions, disputes and/or other controversies arising under any formal, informal, written and/or oral agreement and/or other relationship between the Contractor and any one or more of its consultants, sub-consultants and/or subcontractors shall be and remain in the Contractor's sole province, interest and responsibility.

17. HEADINGS

The paragraph headings of this Agreement are inserted for reference only and shall not be used to interpret this Agreement in any way.

18. ENTIRE UNDERSTANDING OF THE PARTIES; AMENDMENT

A. This Agreement represents the entire understanding between the parties, and no other prior or contemporaneous agreement(s), made orally or in writing, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties, or to vary any of the terms contained herein.

B. This Agreement shall not be modified or amended, except in writing, signed by the parties, in conformance with the terms and conditions, annexed hereto and made a part hereof as **Attachment C**.

NO FURTHER TEXT ON THIS PAGE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last below written.

BOARD OF EDUCATION RETIREMENT _____

SYSTEM OF THE CITY OF NEW YORK

By: _____

Sanford R. Rich

Executive Director

By: _____

Signature of Authorized Person

_____

Print Name of Authorized Person

_____

Print Title of Authorized Person

_____

TAX ID # **(REQUIRED)**

Approved as to Legal Sufficiency:

By: _____

Alexander Kazazis
General Counsel

BERS ACKNOWLEDGMENT

STATE OF NEW YORK)

) *ss.:*

COUNTY OF KINGS)

On this _____ day of _____, 2021, before me personally came Sanford Rich, to me known and known to me to be the Executive Director of the Board of Education Retirement System of the City of New York, to execute the foregoing Agreement on behalf of the Board of Education Retirement System of the City of New York and said Sanford Rich acknowledged that she executed the foregoing Agreement on behalf of said Board of Education Retirement System of the City of New York.

_____

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

CONTRACTOR ACKNOWLEDGMENT

STATE OF)

) *ss.:*

COUNTY OF)

On this ____ day of _____, 2021, before me personally came one _____, to me known and known to me to be the _____ of _____ to execute the foregoing Agreement for and on behalf of _____ and, the same _____ attested that he/she was duly authorized to execute the foregoing Agreement for and on behalf _____and the same _____ acknowledged that he/she did indeed execute the foregoing Agreement for and on behalf of _____.

_____

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

_____

Approved as to Form/Certified as to Legal Authority:

By: _____
Acting Corporation Counsel

ATTACHMENT D - BERS TERMS AND CONDITIONS

1. Captions

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

2. Compliance With Laws

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

3. Unlawful Provisions Void

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

4. Religious Activity Prohibited

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

5. Political Activity Prohibited

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

6. Publication And Publicity

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

7. Copyright

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

8. Patents

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

9. Accounting for Property

If any property is acquired by the Contractor with funds provided by BERS under this Agreement, the property shall be deemed purchased by BERS for the use of the Contractor during the term of the Agreement and shall be

permanently embossed "Property of New York City Board of Education Retirement System" and shall be returned to BERS, at the Contractor's expense, within thirty (30) days after the end of said term, unless the Contractor is otherwise notified in writing by the Executive Director or his designee.

10. Non-Reimbursable Expenses

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

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

11. No Extra Compensation

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

12. Invoices And Payments

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

13. No Estoppel

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

14. Acceptance of Final Payment

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

15. Claims -Limitation of Action

No action at law or equity shall be maintained by the Contractor, its successors, against BERS on any claim based upon or arising out of this Agreement, or out of anything done in connection with this Agreement, unless such action shall be commenced within six (6) months after the date of filing of the voucher for final payment hereunder, or

within six (6) months of the required completion date for the services performed hereunder, whichever is sooner. None of the provisions of Article 2 of the Civil Practice Law and Rules shall apply to any action against BERS arising out of this Agreement.

16. Notices

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

17. Amendments and Waivers

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

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

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

18. Suspension of Deliveries

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

19. Cancellation

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

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

secure the services or any part thereof under this section of the Agreement, the certificate of the Executive Director or his designee indicating the amount of services secured, the cost and excess cost, if any, of completing this Agreement, and the amount of liquidated damages hereunder, shall be conclusive and binding upon the Contractor, its assigns and all other claimants.

20. BERS Determination

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

21. Investigations

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the governmental agency which is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, permit, contract, or license entered into with the City, the State, or any political subdivision thereof, or any local development corporation within the City, then;

C. (a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license may convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

> I. The disqualification for a period not to exceed five (5) years from the date of the adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or obtaining any contract, lease, permit or license with or from the City or BERS; and /or
> II. The cancellation or termination of any and all such existing City and BERS contracts, leases, permits or license that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City and BERS incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods

delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the Board.

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

I. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

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

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

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

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

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

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

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

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

22. Reports, Inspection and Records

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

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

C. The Contractor shall make its staff, and premises, books, records, operations, and services provided under this Agreement, and those of its subcontractors, available to BERS and to any person, agency or entity designated by BERS, at any time, for program audit, fiscal audit, inspection, observation, sampling, visitation and evaluation, and shall render all assistance and cooperation for said purposes. The Contractor agrees to attend, upon demand, any

investigation conducted by BERS to produce any records and other documents required by BERS at that investigation, to cooperate with BERS, and to give sworn testimony pertaining to those documents or the subject of the investigation; provided only that the investigation, testimony, records and documents relate to the subject of the Contractor's relationship with BERS. If a corporation, partnership or government agency, the Contractor agrees to require its officers, employees and partners to comply with the forgoing.

D.1n its' record keeping the Contractor shall also comply with all federal, state and local laws and regulations pertaining to such records, including, without limitation, the regulations of the Comptroller, and shall require its subordinates to do likewise.

E.1n the event that any federal, state or local government agency, or other public or private agency conducts an audit of any of the Contractor's operations which pertains directly or indirectly to the .goods and services provided pursuant to this Agreement, within five (5) working days after the receipt by the Contractor of notice of the commencement of such audit, the Contractor shall give notice of such commencement to BERS; and within five (5) working days after receipt by the Contractor of a copy of any resulting interim or financial audit report, the Contractor shall supply on copy thereof to BERS.

23. Non-Assignment Of Contract

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

24. Contractor's Staff

The Contractor shall employ or contract for the service of only competent workmen, consultants, independent contractors and other employees as are, or reasonably may be, necessary for the performance of the Services hereunder.
The Contractor warrants that it shall be solely responsible for its employees' work, direction, safety and compensation.
The Contractor agrees to replace immediately any employee, and not engage such employee in the performance of this Agreement, if the Contractor is notified in writing that, in the opinion of either the Executive Director, or his designee, such employee is incompetent or otherwise impedes the performance of the services hereunder.

25. Confidentiality Of Records

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

26. Testimony

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

27. No Personal Liability

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

28. Conflict Of Interest

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

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

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

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

29. Antitrust

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

30. Merger and Choice Of Law

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

31. Participation In An International Boycott

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

B. Upon the final determination by the Commerce Department or any other agency of the United States that the Contractor or a substantially-owned affiliated company thereof, participated, or is participating, in an international boycotting violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations

promulgated thereunder, the Executive Director or his designee may, at his option. render forfeit and void this contract.

32. No Discrimination

A. The Contractor will strictly comply with all applicable Federal, State and Local laws pertaining to the subject of discrimination on any ground, as they may now read or as they may hereafter be amended.

B. The Contractor is, and will remain, an Equal Opportunity Employer. In addition to the other requirements of this paragraph 32, the Contractor shall provide equal opportunity for all qualified persons, and shall not discriminate in employment because of race, creed, gender, color, age, sexual orientation. national origin, handicapping condition. marital status, or religion and shall promote the full realization of equal opportunity.

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

I. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, not any person acting on behalf of such contractor or subcontractor, shall by origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
II. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin;
III. That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;
IV That this contract may be canceled or terminated by the state or municipality, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract;
V. The aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York; and
VI. That BERS is, for purposes of this subparagraph C., a "state or municipality."

33. Equal Employment Opportunity Requirements For Professional Contractors

A. Definition of Terms for the Implementation of a Program of Affirmative Action.
The following terms, when used in this paragraph, shall have the meanings given for them

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

II. "Minority Groups and Affected Classes": Blacks, Hispanics (Non-European), Asian Americans, American Indians, females and individuals with handicapping conditions.

III. "Program of Affirmative Action": A detailed, result-oriented set of written procedures submitted by a Contractor or sub-contractor which when implemented with conscious effort results in compliance with the Equal Opportunity Policy herein, through full utilization and equal treatment of minorities, women and individuals with handicapping conditions at all levels and in all segments of the Contractor's or sub-contractor's work force. An effective Program of Affirmative Action shall include but not necessarily be limited to, the following elements:

a. Development or reaffirmation of the Contractor's or sub-contractor's Equal Opportunity Policy;
b. Dissemination of the Policy;
c. Responsibility for implementation;
d. A survey and analysis of employment at all levels and in all categories and aspects of the Contractor's or sub-contractor's work force, which determines if and at which levels, categories, and aspects there is an under-utilization of minority and female employees;

e. Establishment of goals and timetables toward the attainment of which the Contractor's or subcontractor's good faith effort must be directed to remedy any identifiable underutilization of minorities and women;
f: An analysis of employment policies and practices, including but not limited to seniority system, recruitment, training, promotion, insurance and job benefits and their effects upon minorities, women and individuals with handicapping conditions;
g. Corrective actions taken, or to be taken, toward the elimination of any employment policy or practice having a discriminatory effect on minority group members and women; and
h. Description of the Contractor's efforts to engage, as sub-contractors, bona fide minority business enterprises and female enterprises.

IV "Goals and Timetables": Projected levels of achievement resulting from an analysis by the Contractor or sub-contractor of its deficiencies, and of what it can reasonably do to remedy them within a specified time period.

V. "Underutilization": Having fewer minorities, women and individuals with handicapping conditions in a particular job classification than would reasonably be expected by their availability in the appropriate labor force.

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

B. Required Program of Affirmative Action

I. The Contractor is required to identify and eliminate overt and covert discriminatory practices and implement the Program of Affirmative Action. Upon demand of the Office the Contractor shall submit to the Office a detailed written Program of Affirmative Action (hereinafter referred to as a "P.A.A."). In the event the Contractor submits a P.A.A. not acceptable to the Office, the Office will require the correction or revision of the P .A.A. to its satisfaction.

II. In the event the Contractor fails to submit such an acceptable P .A.A. within the time specified in the demand, the Contractor may be declared in default. The Director shall be the sole judge of the P.A.A.'s acceptability.

The P.A.A. shall:

a. Apply to all Board of Education professional services contracts with the Contractor;
b. Encompass all phases of the employment process, including evaluation of job classification to ensure job relatedness, recruitment, selection, validity of examinations, retention, layoffs, seniority, assignments, training, promotion, salary and benefits;
c. Fulfill the following requirements:

i. Include measurable goals, reasonable timetables and specific programs to be implemented by the contractor to identify and eliminate deficiencies in employment practices with respect to the manifest underutilization of members of minority groups and members of affected classes;

ii. Include a statement of the present utilization of minority group members and women in the Contractor's work force and a projection of the minority utilization in the Contractor's work force for the life of the Contract and for at least a one-year period succeeding its completion. This statement and projection shall include present and project 1) rates or hiring and promotion or minority group members and women ill specific job categories at each wage rate within each level of employment and according to major organizational unit, and (2) percentages of minority group and women utilization in specific job categories at each wage rate within each level of employment, and according to major organizational work force;

iii. Include all of the Contractor's facilities within New York City as well as those facilities located elsewhere within the continental limits of the United States;

iv. Specify the union(s) or other employee organizations to which the Contractor's employees belong, and shall include commitments to good faith efforts to effect Equal Opportunity changes directly or indirectly, in programs by such unions or organizations to recruit, train, qualify or otherwise select members, if such changes are deemed necessary. The P.A.A. shall also include a copy of any agreement with an employee association which affects employment policies and practices;

v. Be submitted in such format as shall be specified by the Director of the Office; vi. Include a commitment to submit to the Director a separate P.A.A., of the form (i) to (v) hereof, for each subcontractor prior to approval of the subcontractor by BERS;

vii. Include a written evidence or proof which shows that minority entrepreneurs have been solicited and given an equal opportunity to submit proposals and that such proposals have been given equal consideration for award;

viii. Contain commitments as to goals for minority and affected classes employment and adoption of equal employment practices not less strict than the commitments contained in the Contractor's most recent P .A.A. which was approved by the Office.

C. Compliance Inspection Report

Upon demand of the Office, the Contractor shall, within the specified time, submit to the Office a Compliance Inspection Report. The completed Compliance Inspection Report must be returned to the Office within such time as is specified in the requisition for information accompanying the report form.

D. Conferences

The Contractor shall attend such conferences as shall be required by the Office for the purpose of acquainting it with the statutory and contractual requirements and what specific measures shall constitute an acceptable P.A..A..

E. Implementation of P.A..A.

During the Term of the Contractor, the Contractor shall successfully implement the P.A..A.. approved by the Office.

F. Board of Review

If, in the opinion of the Office, the Contractor has breached any of the requirements of paragraphs 31 or 32 hereof, it may seek to have the Contractor declared in default by the Evaluation Committee as provided elsewhere herein.

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

34. MacBride Principles Provisions for Board of Education Contractors

ARTICLE I. MACBRIDE PRINCIPLES PART A

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

PART B

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

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

a. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

b. take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

c. ban provocative religious or political emblems from the workplace;

d. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

e. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

f. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

g. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;

h. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

i. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE II. ENFORCEMENT OF ARTICLE I.

The Contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

35. Non-Collusive Bidding

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

36. Set-Off Rights

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

37. Fair and Ethical Business Practices

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

A. File with a government office or employee, a written instrument which intentionally contains a false statement or false information;

B. Intentionally falsify business records;

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

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

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

38. Indemnification

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

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

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

Local Law No. 33-2012, the Whistleblower Protection Expansion Act ("WPEA"), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that

a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

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

40. Paid Sick Leave Law Contract Rider

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.[2] Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City's Department of Consumer Affairs ("DCA"); DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

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

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

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

Pursuant to the PSLL and Rules:

Applicability, Accrual and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLL ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine who much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee

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

may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

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

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, or condition or such employee's need for medical diagnosis or preventive medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

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

<u>Exemptions and Exceptions</u>

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

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his

or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the minimum wage;

- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml.

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

Records

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

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PCA has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed $500 for a first violation, $750 for a second violation within two years of the first violation, and $1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any

other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

ATTACHMENT E

PRICE CERTIFICATION CLAUSE (REVISED 11/13/78)

The proposer certifies that the prices, warranties, conditions, benefits and terms quoted herein are at least equal or more favorable to the Board of Education Retirement System of the City of New York than the prices, warranties, conditions, benefits and terms currently quoted by the proposer to any customers for the same or a substantially similar quantity and type of item(s) or services as described herein. This certification shall not apply to prices, warranties, conditions, benefits and terms under contracts in effect between the proposer and other customers at the date of submission of the proposal within, except as provided herein.

The successful proposer (hereinafter called the "Contractor") further certifies that during the period between the proposal submission date and the completion of the term of this contract, should subcontractor offer prices, warranties, conditions, benefits, and terms more favorable than those quoted herein, or provide changed prices, warranties, conditions, benefits and terms more favorable than those quoted herein under a contract in effect at the proposal submission date with any customer, for the same or a substantially similar quantity and type of item(s) or services, then the contractor shall immediately thereafter notify the New York City Board of Education Retirement System, Purchasing Management. Regardless of whether such notice is sent by the contractor or received by the New York City Board of Education Retirement System, this contract shall be deemed amended retroactively to the effective date of more favorable treatment, to provide the more favorable prices, warranties, conditions, benefits, and terms. The Board of Education shall have the right and option to decline any such amendment.

If the contractor is of the opinion that an apparently more favorable price, warranty, benefit, condition, and term quoted, offered or provided to a customer is not more favorable treatment, the contractor shall immediately notify the Executive Director, of the Board of Education Retirement System in writing setting forth in detail the reasons why the contractor believes the apparently more favorable treatment is not in fact more favorable treatment. The Director of Purchase, Purchasing Management, after consideration of the written explanation may, in their sole discretion, decline to accept the explanation and thereupon the terms will be at least equal to or more favorable to the Board of Education Retirement System than the prices, warranties, conditions, benefits and terms offered by the contractor to any customer for the same or substantially similar quantity and type of item(s) and/or services as of the effective date of the revision.

The contractor hereby authorizes the inspection, review and copying of contracts and documents that pertain or relate to the performance of this clause of the contract. The contractor shall be obligated to keep the contracts and documents referred to in the above paragraph during the effective period(s) of this contract and for a period of three years after the final payment of this contract.

ATTACHMENT F

AFFIRMATION
RFP#: 2021-01 – TEMPORARY STAFFING SERVICES

The undersigned proposer affirms and declares that said proposer is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer to receive public contracts except _____

Full Name of Proposer_____

Address_____

City_____State_____Zip Code_____

_____

CHECK ONE AND INCLUDE APPROPRIATE NUMBER

____A: Individual or Sole Proprietorship
SOCIAL SECURITY NUMBER_____

____B. Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER_____

____C. Corporation
EMPLOYER IDENTIFICATION NUMBER_____

____Certified Woman Owned Enterprise ____Certified Minority Owned Enterprise

Please submit copy of Certification Letter with RFP

____Certified Locally Based Enterprise ____Certified Non-Profit Enterprise

BY:_____
Signature

_____
Title

If a Corporation place seal here
Must be signed by an officer or duly authorized representative

Under the Federal Privacy Act the furnishing of Social Security Numbers by proposers on city contracts is voluntary. Failure to provide a Social Security Number will not result in a proposer's disqualification. Social Security Number will be used to identify proposers to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses which seek City Contracts.

ATTACHMENT G

MINORITY AND WOMEN OWNED BUSINESS ENTITIES PARTICIPATION

The New York City Board of Education Retirement System strongly encourages the substantive participation of minority and women owned business enterprises (M/WBE) in this engagement. The proposal will be deemed to be M/WBE participation if the Prime contractor is identified by a governmental agency as a certified M/WBE. No rating points are assigned for M/WBE status.

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

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

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

Recognition of the efforts above by government agencies, nationally recognized civil rights organizations, or other appropriate groups.

ATTACHMENT H

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law ("SFL") §165-a and General Municipal Law ("GML") §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT

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

[*Please Check One*]

BIDDER'S CERTIFICATION

☐ By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

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

Dated: _____, New York
_____, 20 __

_____
SIGNATURE

_____
PRINTED NAME

_____
TITLE

Sworn to before me this
_____ day of____, 20___

_____
Notary Public

Dated:

I.

ATTACHMENT I

Doing Business Data Form

http://www.nyc.gov/html/dot/weekendwalks/downloads/pdf/doing-business-data-form-2018.pdf

Note that this form should be submitted at the time of proposal *and* submitted again at the time of award.

INSURANCE REQUIREMENTS

A. Duty to Maintain Insurance. The Contractor shall not commence performing services under this Contract unless all insurance required by this Contract is in effect. The Contractor shall ensure continuous insurance coverage in the manner, form, and limits required by this Contract.

B. Types of Insurance Required. The Contractor shall maintain the following types of insurance indicated below. Where this Contract requires that insurance be "at least as broad as" a specified form (including forms issued by the Insurance Services Office (ISO)), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form contained in its policy provides coverage at least as broad as the specified form.

(5) *Commercial General Liability Insurance.* The Contractor shall maintain Commercial General Liability Insurance ("CGL") covering claims for property damage and bodily injury, including death, and personal and advertising injury that may arise from any of the operations under this Contract. Such CGL must:

a. be in the amount of at least **$1,000,000** per occurrence for bodily injury, including death, and property damage and at least **$2,000,000** in the aggregate, unless this is a construction contract and higher limits are required by the Department of Buildings pursuant to 1 RCNY section 101-08, in which case the limits of CGL must meet or exceed those limits required by the Department of Buildings.
b. provide coverage for personal and advertising injury in the amount of at least **$1,000,000** unless waived in writing by the Executive Director or his/her designee(s).
c. provide coverage that is at least as broad as the coverage provided by the latest edition of ISO Form CG 00 01.
d. be "occurrence" based rather than "claims made."
e. list the "the Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees" as additional insureds with coverage at least as broad as the latest edition of ISO Form CG 20 10 or ISO Form CG 20 26.
f. not include an exclusion that is not included in the latest edition of ISO Form CG 00 01, unless such exclusion is approved in writing by the Board.

(6) *Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance.* The Contractor shall provide, and shall cause its subcontractors to provide, Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.

(7) *Commercial Automobile Liability Insurance*. If vehicles are used in the provision of services under this Contract, the Contractor shall provide Commercial Automobile Liability Insurance in a combined single limit of at least **$1,000,000** for each accident for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the Commercial Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement ISO Form CA 99 48) and MCS-90.

(8) *Professional Liability Insurance.* Unless waived in writing by the Executive Director or his/her designee(s), if the Contractor is providing professional services under this Contract for which Professional Liability Insurance is commercially available, the Contractor shall maintain Professional Liability Insurance appropriate to the type(s) of such services in the amount of at least **$1,000,000** per claim.

a. Unless waived in writing by the Executive Director or his/her designee(s), the Contractor shall cause its subcontractors that provide professional services under this Contract for which Professional Liability Insurance is commercially available to maintain Professional Liability Insurance appropriate to the type(s) of such services in the amount of at least **$1,000,000** per claim.

b. The Board will accept occurrence or claims-made policies for Professional Liability Insurance. Claims-made policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

F. General Requirements for Insurance.

(8) *Insurance Policy Deductibles, Self-Insured Retentions, and Self-Insurance Programs.* Any deductibles or retentions in excess of **$5,000** shall be disclosed by the Contractor and shall be subject to advance written approval by the Executive Director or his/her designee(s). Any deductible or retention amounts elected by the Contractor or imposed by the Contractor's insurer(s) shall be the sole responsibility of the Contractor. The Contractor shall be permitted to provide insurance of any type required under this Contract by means of a self-insurance program (or make use of any self-insured retention)[3] *only* in the event (a) such program provides BERS and the City, including their respective officials and employees, with all rights that would be provided by traditional insurance required by this Contract including, but not limited to, the defense obligations that insurers are required to undertake in liability policies, and (b) such self-insurance program is approved in advance by the Executive Director or his/her designee(s). If the Contractor desires to provide any such insurance by means of a self-insurance program, the Contractor shall submit a statement satisfactory to the Executive Director or his/her designee(s), signed by a party authorized to bind the Contractor and acknowledged by a notary public, by which the Contractor (i) affirms that such self-insurance program provides at least the same level of coverage as required by this Contract, (ii) agrees to assume responsibility for satisfying all obligations of the self-insurance program if such program for any reason fails to do so, and (iii) provides BERS with the name and address of the office or official of its self-insurance program who is responsible for satisfying the self-insurance obligations. The foregoing requirements for advance approval include, but are not limited to, the Contractor's formation of, and/or participation in, any other alternative risk management arrangement(s) as a substitute for a traditional insurance policy(ies). In addition, the Contractor must provide the BERS Contract Manager with a written set of detailed rules and procedures for BERS and/or the City to file a claim(s) and to obtain coverage under any risk retention fund(s) and/or any other alternative risk management arrangement(s) including, but not limited to, any required claim form(s), contact information, and any information required to be submitted with a claim(s). The Contractor's rules and procedures for submitting a claim(s) and obtaining coverage under any risk retention fund(s) and/or any other alternative risk management arrangement(s) shall be subject to approval by the Executive Director or his/her designee(s). Approval of any proposed self-insurance program, other alternative risk management arrangement(s) and the rules and procedures for submitting a claim(s) and obtaining coverage is at the sole discretion of BERS. As determined by the Executive Director or his/her designee(s),any unreasonable failure and/or refusal by the Contractor and/or its agent(s) to accept and process a claim(s) from BERS, the City and/or their agent(s) and/or any unreasonable disclaimer(s) of coverage by the Contractor and/or its agent(s) shall entitle BERS to deduct from any compensation due and owing to the Contractor the amounts, as determined by BERS and/or the City, of any and all resulting losses, damages, expenses (including, but not limited to, reasonable attorney fees), claims, demands, judgments, suits, allegations, liabilities, settlements and/or other costs that BERS and/or the City, including

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

their respective officials and employees, shall incur regarding any affected claim(s) and/or denial of coverage. The foregoing provisions shall apply equally to any subcontractor(s).

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

(10) The Contractor shall be solely responsible for the payment of all premiums for all required insurance.

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

(12) Policies of insurance provided pursuant to this Contract shall be primary and non-contributing to any insurance or self-insurance maintained by BERS and the City.

(13) The Contractor may satisfy its insurance obligations under Contract through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(14) In his/her sole discretion, the Executive Director or his/her designee(s), may, subject to the approval of the Comptroller and the City Corporation Counsel, accept letters of credit and/or custodial accounts in lieu of the required insurance.

G. Proof of Insurance.

(7) For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) days of award of this Contract. ACORD forms are not acceptable proof of such insurance.

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

(8) For each type of insurance required by this Contract except for Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall submit within ten (10) days of award of this Contract or such other time as may be specified by the Executive Director or his/her Designee(s).

a. A Certificate of Insurance on a form acceptable to the Executive Director or Designee, a duly executed Certification of Insurance Broker or Agent and the endorsement or policy provision containing the required coverage as an additional insured and, if applicable, loss payee.

i. If the Certificate of Insurance form contains a space to indicate the "certificate holder," such space shall list: The Board of Education Retirement System of the City of New York, 65 Court Street, 16th Floor Brooklyn, NY 11201.

ii. The Certificate of Insurance form(s) evidencing CGL shall state: "The Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees are additional insureds" or similar language acceptable to the Executive Director or his/her Designee(s).

-OR-

b. A copy of the complete insurance policy(ies) as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time the Contractor shall submit a certified copy of the policy.

(9) The Contractor shall submit documentation confirming renewals of insurance to BERS prior to the expiration date of coverage of policies required under this Contract. Such documentation shall comply with the requirements concerning proof of insurance in paragraphs (1) and (2) above.

(10) The Contractor shall provide BERS and/or the City with a copy of any policy of insurance required by this Contract upon the demand for such policy by the Executive Director or the City Corporation Counsel.

(11) Acceptance by the Executive Director of proof of insurance does not excuse the Contractor from maintaining policies consistent with all provisions of this Contract (and ensuring that subcontractors maintain policies that are required under this Contract) or from any liability arising from its failure to do so.

(12) In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under Contract shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Board of Education Retirement System, Attn: Legal, 65 Court Street, 16th Floor Brooklyn, NY 11201, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

H. Miscellaneous.

(7) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under any insurance policy maintained in accordance with this Contract that is required to include BERS and the City as an additional insured and/or loss payee, the Contractor shall provide the insurer with timely notice thereof on behalf of BERS and the City, including their respective officials and employees. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees as Additional Insured [and, if applicable, Loss Payees]" and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007 and the Legal Department of the Board of Education Retirement System at 65 Court Street, 16th Floor, Brooklyn, NY 11201. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify BERS and the City, including their respective officials and employees, for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of BERS and/or the City, including their respective officials and employees.

(8) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Contract, the Contractor shall at all times fully cooperate with BERS and the City with regard to such potential or actual claim.

(9) The Contractor's failure to maintain any of the insurance required by this Contract shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by BERS or the City at any time.

(10) Insurance coverage in the minimum amounts required in this Contract shall not relieve the Contractor or its subcontractors of any liability under this Contract, nor shall it preclude BERS and/or the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Contract or law.

(11) Apart from damages or losses covered by Workers' Compensation Insurance, Employers' Liability Insurance, Disability Benefits Insurance, Commercial Automobile Liability Insurance, and Professional Liability Insurance, the Contractor waives all rights against BERS and the City, including their respective officials and employees, for any damages or losses that are covered under any insurance required under this Contract (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Contract.

(12) If the Contractor requires any subcontractor to procure insurance with regard to any operations under this Contract and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list BERS and the City, including their respective officials and employees, as an additional insured. For CGL, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

ATTACHMENT K - PRICING FORM

Please reference Exhibit 2 - Job Descriptions for a brief overview of the listed positions. This list of titles is not exhaustive and is meant for the sole purpose of assessing Proposer pricing. The number of employees required for any given title is subject to change. **For each individual quoted, assume a minimum BERS hourly rate of $25 and 35 hours per week.**

Does this pricing include the provision of medical and/or retirement benefits? Yes____ No____

TITLE	# OF EMPLOYEES	# HOURS/WEEK	BERS HOURLY RATE (MIN $25)	% MARKUP	NOT TO EXCEED BILL RATE	OT RATE (IF NECESSARY)	TOTAL
Accountant	1	35				0	0
Bookkeeper	1						
Data Entry Clerk	1	35				0	0
Administrative Assistants	1	35				0	0
File Clerks	1	35				0	0
Paralegal	1	35					
Attorney	1	35				0	0
Mail Clerk, except Mail Machine Operators and Postal Service	1	35				0	0
Public Relations Manager	1	35				0	0
Public Information Officer	1	35				0	0
Call Center Clerk	1	35				0	0
Computer Operators	1	35				0	0
Computer Support Specialists	1	35				0	0
Investment Analyst	1	35				0	0
TOTAL PRICING - YEAR 1							0

ATTACHMENT K - PRICING FORM

Please reference Exhibit 2 - Job Descriptions for a brief overview of the listed positions. This list of titles is not exhaustive and is meant for the sole purpose of assessing Proposer pricing. The number of employees required for any given title is subject to change. **For each individual quoted, assume a minimum BERS hourly rate of $25 and 35 hours per week.**

Does this pricing include the provision of medical and/or retirement benefits? Yes____ No____

TITLE	# OF EMPLOYEES	# HOURS/WEEK	BERS HOURLY RATE (MIN $25)	% MARKUP	NOT TO EXCEED BILL RATE	OT RATE (IF NECESSARY)	TOTAL
Accountant	1	35				0	0
Bookkeeper	1						
Data Entry Clerk	1	35				0	0
Administrative Assistants	1	35				0	0
File Clerks	1	35				0	0
Paralegal	1	35					
Attorney	1	35				0	0
Mail Clerk, except Mail Machine Operators and Postal Service	1	35				0	0
Public Relations Manager	1	35				0	0
Public Information Officer	1	35				0	0
Call Center Clerk	1	35				0	0
Computer Operators	1	35				0	0
Computer Support Specialists	1	35				0	0
Investment Analyst	1	35				0	0
TOTAL PRICING - YEAR 2							0

ATTACHMENT K - PRICING FORM

Please reference Exhibit 2 - Job Descriptions for a brief overview of the listed positions. This list of titles is not exhaustive and is meant for the sole purpose of assessing Proposer pricing. The number of employees required for any given title is subject to change. **For each individual quoted, assume a minimum BERS hourly rate of $25 and 35 hours per week.**

Does this pricing include the provision of medical and/or retirement benefits? Yes____ No____

TITLE	# OF EMPLOYEES	# HOURS/WEEK	BERS HOURLY RATE (MIN $25)	% MARKUP	NOT TO EXCEED BILL RATE	OT RATE (IF NECESSARY)	TOTAL
Accountant	1	35				0	0
Bookkeeper	1						
Data Entry Clerk	1	35				0	0
Administrative Assistants	1	35					0
File Clerks	1	35				0	0
Paralegal	1	35					
Attorney	1	35				0	0
Mail Clerk, except Mail Machine							
Operators and Postal Service	1	35				0	0
Public Relations Manager	1	35				0	0
Public Information Officer	1	35				0	0
Call Center Clerk	1	35				0	0
Computer Operators	1	35				0	0
Computer Support Specialists	1	35				0	0
Investment Analyst	1	35				0	0
TOTAL PRICING - YEAR 3							0
TOTAL PRICING YEAR 1							
TOTAL PRICING YEAR 2							
TOTAL PRICING YEAR 3							0
TOTAL PROPOSAL PRICING							0