

**WORKFORCE DEVELOPMENT CORPORATION (“WDC”)  
REQUEST FOR PROPOSALS**

**RFP TITLE: Web Development Training Program**

**PIN: 2016WDC0004**

**AUTHORIZED WDC CONTACT PERSON**

Proposers are advised that the **Authorized WDC Contact Person** for all matters concerning this Request for Proposals (“RFP”) is:

**Name:** Eichakeem McClary  
**Title:** Deputy Director and Counsel  
**Mailing Address:** Workforce Development Corporation  
110 William Street, 8<sup>th</sup> Floor  
New York, New York 10038  
**Telephone #:** 212-618-6764  
**E-mail Address:** [emccclary@sbs.nyc.gov](mailto:emccclary@sbs.nyc.gov)

**SECTION I - TIMETABLE**

**A. Release Date of this RFP: May 20, 2016**

**Note:** All questions and requests for additional information concerning this RFP should be directed to the Authorized WDC Contact Person identified above.

**Questions Due Date: June 1, 2016**

**B. Proposal Due Date and Time and Location: June 27, 2016, by 5:00 p.m. (EST)**

1. Responses must be submitted electronically by email, in either Adobe PDF or Microsoft Word, to Eichakeem McClary at [emccclary@sbs.nyc.gov](mailto:emccclary@sbs.nyc.gov), with a copy to [LSantiago@sbs.nyc.gov](mailto:LSantiago@sbs.nyc.gov). If preferred, applicants may submit their information in hard copy to:  
Attn: Eichakeem McClary  
Deputy Director  
Workforce Development Corporation  
c/o NYC Dept. of Small Business Services  
110 William Street, 8<sup>th</sup> Floor  
New York, New York 10038
2. All responses to this RFP are to be prepared and submitted at the Proposer’s expense. The WDC will not pay any costs incurred by Proposers in connection with the preparation, submission, and evaluation of the RFP response.
3. Please be sure to send all proposals by 5:00 p.m. EST on June 3, 2016.

**Note:** The WDC will consider requests made to the Authorized WDC Contact Person to extend the Proposal Due Date and Time prescribed above. However, unless the WDC issues a written addendum to this RFP which extends the Proposal Due Date and Time for all proposers, the Proposal Due Date and Time prescribed above shall remain in effect.

**C. Anticipated Contract Start Date: September 1, 2016**

## **SECTION II: SUMMARY OF THE REQUEST FOR PROPOSALS**

### **A. WDC Background**

The WDC is an independent not-for-profit created by the City of New York (“City”) specifically for the purpose of assisting the City in developing and funding workforce initiatives, and works closely with the City’s Department of Small Business Services (“SBS”) to contribute to the economic vitality of the City by promoting workforce development and job creation through public and private partnerships.

The NYC Tech Talent Pipeline is a \$10 million industry partnership designed to support the growth of the City’s technology ecosystem and prepare New Yorkers for 21<sup>st</sup> century jobs. Launched in May 2014 by NYC Mayor Bill de Blasio, the NYC Tech Talent Pipeline provides leadership, funding, and support to public and private partners working to deliver technology education, training, and job opportunities to New Yorkers across the five boroughs. A workforce initiative housed at the WDC, the NYC Tech Talent Pipeline is working to define employer needs, develop effective training and education solutions, and deliver homegrown talent for 21st century jobs.

In support of this mission, Mayor de Blasio convened the inaugural NYC Tech Talent Pipeline Advisory Board in February 2015, which includes more than 25 CEOs, CTOs, and CIOs representing the City’s leading technology employers and a collective workforce of 40,000 New Yorkers. Advisory Board members share the mission of aligning training and education solutions with industry demand and delivering homegrown talent for hometown jobs. To that end, participating Advisory Board members have helped to define and confirm demand across tech occupations and provide feedback on proposed learning milestones and curricular content required to adequately prepare individuals for these positions – including that represented within this RFP. (See <http://www.techtalentpipeline.nyc> for more information.)

### **B. Purpose of RFP**

The technology industry is among the fastest growing and highest paying sectors in the City today, representing 291,000 jobs and \$30 billion in annual wages. Yet while businesses are struggling to fill open positions, technology jobs remain out of reach for many New Yorkers who lack access to the technology training and education necessary to become active participants in the 21st century economy.

The NYC Tech Talent Pipeline works together with NYC employers to develop a portfolio of training programs aimed at equipping New Yorkers with the skills and connections to employment needed to secure jobs in in-demand occupations. Among these programs is the NYC Web Development Fellowship, which has trained over 120 New Yorkers to date and connected graduates to web development positions with salaries of \$65,000 and above at employers like Goldman Sachs, Microsoft, and Viacom. Following on the success of previous iterations of our Web Development Training Program, we are looking for a provider partner to develop a program model that builds upon the success of this initial flagship program.

Nationally, the demand for web developers is expected to increase dramatically, with the U.S. Bureau of Labor Statistics estimating 27% growth over the next 8 years, representing an increase of 34,000 jobs. Here in New York City, according to an analysis of 3.1 million LinkedIn members, web development skills rank amongst the most highly sought-after qualifications of tech talent across the five boroughs. This corresponds well with the New York State Department of Labor’s estimates that employment in web development roles in the city will grow by 34.2 percent by 2022. This is nearly triple the general projected growth rate for citywide employment during the same period.

Therefore, the WDC is seeking appropriately qualified vendors (each a “Contractor”) to help develop and launch a program model for a full-time, immersive occupational training in Web Development (each a “Program”).<sup>1</sup> The Contractor is expected to provide this training to a minimum of sixty-four (64) eligible enrolled individuals (“Trainees”)

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<sup>1</sup> The goal of this RFP is to award up to three (3) contracts. The WDC reserves the right to not make three awards and/or to make more than one award to a single proposer based on the quality of submissions.

through two (2) cohorts occurring over the anticipated 18-month term of the contract. Specifically, the Program must be designed to incorporate input from industry on needed skills and learning milestones, serve individuals with little or no prior experience in web development, and at the end of the Program, connect these individuals with web development jobs (or related technology jobs approved by the WDC) in the City. In addition, proposers are strongly encouraged to propose a training delivery model that exceeds the minimum level set forth above (for example, additional Trainees to be served and additional cohorts for the Program).

The WDC's expectation is that this model, if proven successful, will then be made available in its entirety at no cost to qualified training providers across the City consistent with a process and criteria to be developed at a later date. In doing so, the WDC seeks to help develop the capacity of the City's training and educational organizations to deliver in-demand, industry-aligned tech training to qualified New Yorkers.

### **C. Anticipated Contract Term**

It is anticipated that the term of the contracts awarded from this RFP will be **eighteen (18) months** with a renewal option at the WDC's sole discretion for additional periods not exceeding four and a half years, commencing upon Contractor's receipt of a written notice to proceed from the WDC. The WDC reserves the right, prior to contract award and renewal contract execution, to determine the length of the initial contract term and each option to renew, if any.

### **D. Anticipated Available Funding**

It is anticipated that the maximum available funding for the contracts awarded from this RFP will be **\$1,100,000** in federal Workforce Innovation and Opportunity Act (WIOA) funds, including up to **\$100,000** specifically set aside for provision of WDC-defined supportive services such as transportation assistance to trainees. The WDC may decide to award up to three (3) contracts, depending upon the quality of submissions. The funding allocation and final contract amount is dependent upon the availability and appropriation of funds and is subject to change. In addition, the WDC reserves the right to modify the funding allocation in the best interests of the WDC.

### **E. Anticipated Payment Structure**

It is anticipated that the payment structure of the contract awarded from this RFP will be a combination of line-item reimbursements and performance-based payments tied to job outcomes. However, the WDC reserves the right to select any payment structure that is in the WDC's best interest. No payments will be made nor funds applied to other uses. WDC will endeavor to accommodate reasonable requests for payment structures that incorporate work performed and the Contractor's allocation, dedication and expenditure of resources. Work performed by the Contractor beyond the scope of this solicitation and the resulting contract award, will not be compensated without WDC's prior approval.

### **F. Minimum Qualification Requirements**

The following are the Minimum Qualification Requirements of this RFP. Proposals that fail to meet any of these requirements will be found non-responsive and rejected.

- Proposer has at least two (2) years of demonstrated experience in developing training curriculum and providing training services in the City that has led to either measureable wage gains or employment for trainees;
- Within the past year, Proposer has conducted a comprehensive web development training program with at least one cohort; and
- Within the past year, Proposer has successfully connected trainees to employment in fields related to the training it has provided.

### **G. Inclusion on the NYS Eligible Training Provider List (ETPL)**

Proposer must be able to meet the training provider eligibility requirements set forth in the Workforce Innovation and Opportunity Act, including sections 134(c)(3)(G)(ii)(V) and 122(a). Compliance with applicable law will require, among other things, that the selected Contractor and training Program already be on the New York State Eligible Training

Provider List (ETPL) or that selected Contractors have applied for, or will apply, for inclusion on the list upon contract award.

#### **H. Preferred Qualifications**

WDC expects the Consultant to possess the following non-exclusive list of qualifications and or/skills:

- Demonstrated experience developing and delivering technology-based training programs;
- Demonstrated training expertise in the most current web development programming languages including, but not limited to, HTML, JavaScript, CSS, and or other in-demand scripting languages in the NYC tech ecosystem (e.g. Python, Ruby, or Node.js) based on demonstrated employer engagement;
- Demonstrated training expertise in relational databases with an understanding of system structures and algorithms to optimize website performance;
- Demonstrated experience and success training individuals who are traditionally underrepresented in the technology sector such as women, young adults, veterans etc. or who have other barriers to training and employment;
- Demonstrated experience building industry relationships, capturing employer feedback, and developing trainings that are responsive to industry need; and/or
- Demonstrated success working with employers to fill their open positions with individuals who completed the Contractor's training.

### **SECTION III - SCOPE OF SERVICES**

#### **A. WDC's Goals and Objectives for this RFP**

The WDC's goals and objectives for this RFP and the resulting contract awards are to award contracts to up to three (3) appropriately qualified Contractors to conduct a full-time, immersive web development training program at a location(s) within the City's five boroughs. Additionally, the WDC intends that the resulting contract award(s) will ultimately accomplish the following related goals and objectives:

- Deliver an industry-informed, full-time<sup>2</sup>, and comprehensive training Program that equips New York City residents with in-demand technology skills and experience, and connect them to web development jobs (or related technology jobs approved by the WDC) in the City earning annualized total compensation of at least \$65,000 per year. NOTE: "Annualized Total Compensation" will include salary and may also include various other forms of remuneration to be approved on a case-by-case basis by the WDC;
- Develop a comprehensive web development training program model, including a technical assessment and curriculum that incorporates input from industry regarding needed technical and professional skills and learning milestones in order to produce a model that can be tested, refined, and deployed in the future to meet growing demand for entry-level tech talent in the City; and
- Refine the training model to support individuals with barriers to employment, including but not limited to, low-income individuals, individuals who are English language learners, and individuals facing substantial cultural barriers, by aligning supportive services such as case management, transportation assistance, and other supports as needed.

#### **B. WDC's Assumptions Regarding Contractor's Approach**

The WDC's assumptions regarding which approach will most likely achieve the goals and objectives of this RFP are delineated below. Contractor(s) will be expected to:

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<sup>2</sup> For the purposes of this RFP, "full-time" is defined as a minimum of 35 hours per week, Monday through Friday, of work leading to program completion, including, but not limited to, in-class instruction, project based assignments completed at the Program training facility, and work-based training.

- Develop, with WDC input, a recruitment and screening process, including a rigorous and exhaustive assessment tool that will accurately capture the minimum skillset and knowledge required to effectively participate in the training in order to enroll Trainees who can be effectively trained through two (2) cohorts and connected with a web development job (or related technology job approved by the WDC) in the City earning Annualized Total Compensation of at least \$65,000 per year. Proposers are encouraged to exceed the minimum levels set forth in this solicitation for Trainee enrollment.
- Outline how the above could be refined to serve individuals with barriers to employment, including but not limited to low-income individuals, individuals who are English language learners, and individuals facing substantial cultural barriers.
- Design and deliver an effective curriculum incorporating input from the NYC Tech Talent Pipeline Advisory Board in order to reflect the needs and expertise of companies seeking or employing web developers. The Contractor is expected to work with the NYC Tech Talent Pipeline to arrange curriculum consultations with industry. This curriculum, which is subject to the WDC's prior approval, is expected to include, but will not be limited to the following:

**Web Developer:**

- Key skills & content areas:
  - **Computer science theory;**
  - **HTML;**
  - **JavaScript;**
  - **Java;**
  - **CSS;**
  - **SQL;**
  - **XML;**
  - **Query;**
  - **.Net;**
  - **Other in-demand scripting languages (as informed by industry feedback)**
  - **Databases and the application of data structures;**
  - **Data analytics;**
  - **Compatibility with mobile applications and emerging platforms;**
  - **Adobe Creative Suite; and**
  - **Culminating Web Development Capstone:** Demonstrating understanding of core course concepts and proficiency in various web development skills in a group project created in consultation with industry.

**Additional core competencies:**

- Developing problem-solving skills;
- Time management and project completion skills;
- Building a resume and portfolio;
- Excelling in technical and non-technical interviews;
- Developing and delivering professional presentations;
- Communicating effectively on diverse teams; Working collaboratively and effectively in a professional setting;
- Building a professional identity, including online presence, professional network, etc.; and
- Understanding of and exposure to the NYC tech ecosystem;
- Hire or designate, with WDC approval, at least two employees dedicated exclusively to the Program: one a full-time Program Manager and one a full-time Educational Case Manager.
- Deliver training to test the developed model with the goal of determining Program efficacy and making recommendations for improvement and replication, including opportunities for future service delivery at a lower cost (both total cost and cost-per-head).
- Establish a training schedule that is full-time and intensive.

- Use a live, in-person class setting to provide the respective training through experienced, knowledgeable, and qualified instructors.
- Supplement live, in-person training with homework or project-based work.
- Develop a strategy to provide professional development training for trainees throughout the course of the program to include non-technical topics (e.g., time management, resume writing, interview prep, conflict resolution, managing team dynamics, communicating effectively, navigating the professional workplace, etc.); and other supportive services.
- Establish a WDC-approved monitoring and evaluation process to track each trainee's attendance, progress and skill attainment during and at the conclusion of the respective training.
- Establish a WDC-approved monitoring process for tracking each trainee's employment status, title, and salary post-program.
- Develop and implement a job placement strategy to connect Program completers with full-time Web Development jobs (or related technology jobs as approved by the WDC) in the City at Annualized Total Compensation of at least \$65,000 per year.
- Provide an appropriate WDC-approved physical location for the provision of training.

**Note:** The WDC's assumptions regarding the proposer's approach represent what the WDC believes to be most likely to achieve its goals and objectives. However, proposers are encouraged to propose an approach that they believe will most likely achieve the WDC's goals and objectives. Proposers may also propose more than one approach. However, if an alternative approach affects other areas of the proposal such as experience, organizational capability or price, that alternative approach should be submitted as a complete and separate proposal providing all the information specified in Section IV of this RFP.

### **C. Contractor Responsibilities**

The Contractor(s) is/are expected to be responsible for at least the following services, activities and deliverables during the contract term:

- **Recruitment of Trainees**
  - Plan and execute a comprehensive outreach and recruitment strategy to recruit, screen and enroll eligible Trainees for participation in the Program. This recruitment strategy will be developed in conjunction with and subject to the approval of the WDC.
- **Eligibility Requirements for Trainees**
  - All Trainees selected by Contractor for participation in the Program must meet the following minimum eligibility criteria:
    - Trainee is at least 18 years of age or older;
    - Trainee is a New York City resident;
    - Trainee is authorized to work in the United States;
    - If currently employed, trainee must have an annual income of no more than \$50,000; and
    - Trainee meets all applicable federal selective service requirements which are available at the following address: <https://labor.ny.gov/workforcenypartners/ta/TA12-9-1-Selective-Service.pdf>
    - Trainee has limited or no prior experience in web development, defined as no prior employment, whether part-time or full-time, as a web developer.
- **Trainee Screening Requirements**
  - Employ a WDC-approved screening mechanism (that focuses on prerequisite skills or competencies) to identify and to enroll eligible and qualified candidates into the Program. Contractor will be required to develop a screening process, including assessment tools, rubrics, and procedures, which will ensure that enrolled Trainees have sufficient aptitude to successfully complete the Program.
  - Use data gathered through the screening process to identify the base skillset required for individuals to successfully participate in training and make recommendations for improvement of the screening process in future iterations of the Program.
- **Provision of Training**
  - Provide training to not less than sixty-four (64) individuals in one year, through at least two (2) simultaneously or consecutively occurring cohorts of students. It is expected that by the end of 18

months, both cohorts will have completed in-class training, and at least the first cohort will be connected to jobs in the field. The winning proposer's Proposed Approach and contract negotiations will ultimately determine the timing of training and job placement.

- Provide in-kind or budget for all requisite training material, equipment, hardware/software and associated costs, including any technological needs (*i.e.*, software, computers, monitors, printers, overhead projectors), necessary to effectively deliver the Program training, unless otherwise specified by WDC.
  - Develop and submit to WDC for prior approval all Program requirements for course completion, including a policy for making up missed classes.
  - Develop the course structure, including number of hours of training, times of day, and class size all of which shall be subject to the WDC's prior approval.
  - Where applicable, provide Trainees credentials resulting from the training.
- **Curriculum**
- Provide a web development curriculum that will effectively train individuals with little-to-no prior experience in relevant programming languages to become web developers that local employers will hire. This will include, but is not limited to, the breakdown of the curriculum by units outlining the goals, details of each unit, and course hours. Additionally, the Contractor will also provide examples of materials and equipment such as a course book, website component, etc.
  - Develop WDC-approved assessments to measure individual Trainees' technical and professional skill attainment, to be delivered prior to, at the midpoint of, and at training completion.
  - Include documented input from specific industry partners.
  - Contractor shall also include, in addition to classroom training, WDC-approved opportunities for professional or on-the-job experience, which may take the form of, but is not limited to paid internships at a wage of not less than \$15/hour, client-based projects, etc. The WDC reserves the right to specify the form of professional experience.
- **Training Instructors**
- Provide a sufficient number of knowledgeable and experienced instructors for the entire duration of the intensive Program training. In addition and unless otherwise approved by the WDC, Contractor will be required to maintain the approved instructor-to-trainee ratio.
  - Ensure that all training instructors can communicate clearly and effectively in English.
- **Educational Case Management**
- Employ an educational case manager who is expected to:
    - Inform and support recruitment and selection efforts.
    - Develop relationships with the Trainees from the beginning of the training program process by participating in initial intake and assessment of accepted applicants;
    - Meet with training instructors on a weekly basis so as to ensure that any Trainee issues that may impact program completion are discovered and addressed in a timely manner via additional tutoring, remediation and other educational resources as needed;
    - Identify and assist Trainees evidencing challenges in the areas of professionalism and job readiness.
- **Data Collection and Reporting**
- Conduct program eligibility screening, collect relevant documentation, and register all Trainees prior to the start of training by using and submitting to the WDC a "Customer Information Form," or another standard capture mechanism to be specified by the WDC.
  - Schedule, set an agenda for, and facilitate weekly conference calls between program staff and the WDC to discuss, among other things, program updates, data from program activities or surveys, Program planning, and troubleshooting (as needed).
  - Share all raw data generated during program implementation, including applications, assessments, survey results, and employer feedback.
  - Document program learnings and employer feedback throughout the Training using WDC-provided templates and/or guidance.
    - Employer feedback regarding the curriculum and assessment rubrics,
    - Updated training curriculum documents, including instructional calendar, key learning objectives, and scopes of major projects or assignments,
    - Recruitment and selection analysis, and

- Monthly reports and dashboards.
  - Facilitate instructional and program staff participation in curricular review and midpoint and final debriefs.
  - Within 45 days of the final day of training for each cohort produce a comprehensive program report which may include, but will not be limited to:
    - Program model best practices;
    - Specific insights about tech business hiring needs and effective training strategies for meeting those needs.
    - Recommendations for program sustainability;
    - Recommendations for improvements to the curriculum, incorporating specific feedback from employer partners; and
    - Additional information and analysis regarding overall job outcomes, technical and professional skill attainment, and the value of and need for supportive and case management services.
    - Support collection of Trainee surveys at pre-training, midpoint, and post-training;
  - Report contact information and periodic retention data for Trainees at 3 month, 6 month, and 12 month intervals after training completion.
- **Jobseeker Services**
- As part of the Program, the Contractor will be required to specify and implement a strategy to connect Trainees who complete the Program to employment as web developers (or a related technology job approved by WDC) in the City earning Annualized Total Compensation of at least \$65,000.

**Note:** Proposers should understand that full payment is ultimately tied directly to fulfillment of agreed upon job outcomes by Trainees who complete the Program. Specifically, Contractor must provide documentation that Trainees have been timely connected to full-time employment in the City as web developers (or a related technology job approved by WDC) earning Annualized Total Compensation of at least \$65,000.

- **Training Location**
- Proposers are expected to provide at least one (1) suitable physical location within the five boroughs for the provision of the training services (The Bronx, Brooklyn, Manhattan, Queens and/or Staten Island). This location must provide a professional and positive learning environment for the Trainees and must have the requisite capacity to accommodate the number of enrolled trainees participating in the training. **Note:** The final set-up of the Program space will be subject to WDC pre-approval and is expected to be compliant with applicable Americans with Disabilities Act requirements and accessible by mass transit.
- **Sustainability & Scaling**
- It is anticipated that the web development training model developed and tested through each Program, will be refined and disseminated in the future to other education and training providers with the goal of meeting demand for skilled Web Developers in the City. As such, the winning Contractor(s), as lead developers and implementers of the Program model(s), will be expected to document the implementation process and make suggestions for model refinement.
- **Administrative Requirements**
- Cooperate with the WDC in meeting all administrative obligations identified in this solicitation and the resulting contract award.
  - Maintain an administrative office during the Term of the resulting contract, which will meet all of the administration and management requirements required by this RFP and the resulting contract award.
  - Facilitate WDC contact with Trainees for periodic focus groups and/or conversations;
  - Facilitate WDC contact with industry partners and hiring contacts for feedback on Trainee performance and opportunities for improvement

## **D. Work Product Licenses**

Any and all materials delivered under any contract that is entered into as a result of this solicitation (the “Work Product”) are the exclusive property of WDC. WDC may use any Work Product prepared by the Contractors in such manner, for such purposes, and as often as WDC may deem advisable, in whole, in part or in modified form, in all formats now known

or hereafter to become known, without further employment of or additional compensation to the Contractors. The Contractors shall not use, transmit, display, publish or otherwise license such Work Product without WDC's prior written consent. The Work Product shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and WDC is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a "work-made-for-hire", the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to WDC, free and clear of any liens, claims or other encumbrances. The Contractors shall retain no copyright or other intellectual property interest in the Work Product. The selected proposer will be required to provide the City with a non-exclusive license in perpetuity to use any software required to perform any of the Contractor's services.

**NOTE:** This section of the solicitation ***DOES NOT*** include any materials created by the successful proposer or Contractor **prior to** entering into the agreement with the WDC. Note, however, that the winning proposer will be **required** to provide the WDC an irrevocable, world-wide, royalty-free, non-exclusive, sub-licensable, license to reproduce, translate, publish, use, make derivative works, distribute and dispose of any pre-existing reports, documents, data, photographs, deliverables, and/or other pre-existing materials delivered under any contract that is entered into as a result of this solicitation.

## **SECTION IV - FORMAT AND CONTENT OF THE PROPOSAL**

**Instructions:** Proposers should provide all information required in the format below. Proposals submitted in hard copy should be printed on both sides of portrait 8 ½" by 11" paper, using Times New Roman font style and a 12-point font size. Pages should be paginated.

If submitted electronically, Program Proposal and Price proposal should be submitted in either PDF or Word format and attached to a single email (further delivery details are below).

The proposal will be evaluated on the basis of its content, not length. Failure to comply with any of these instructions will not make the proposal non-responsive.

### **A. Proposal Format**

#### **1. Proposal Cover Sheet (Attachment A)**

The Proposal Cover Sheet (Attachment A) transmits the proposer's Proposal Package to the WDC. It should be completed, signed and dated by an authorized representative of the proposer. If the proposal is being submitted by a joint venture, include a Proposal Cover Sheet for each entity that is a party to the joint venture.

#### **2. Program Proposal**

The Program Proposal is a clear, concise narrative that addresses the following:

##### **a. Licensing/ Accreditation (Attachment B)**

- Proposer's BPSS license status, if applicable, or exemption to licensing requirements.
- Status of proposed training program on the NYS Eligible Training Provider List (ETPL).

##### **b. Experience (Attachment B)**

- Describe the successful relevant experience of the proposer, each proposed subcontractor, if any, and the proposed key staff in providing the work described in Section III of this RFP. Specifically, proposals should address the following:
  - Objectives of previous occupational training programs

- Brief overview of previous training models offered (part-time, full-time, in-class, on-the-job, hybrid)
- Target population (describe the characteristics of previous program participants including):
  - Skill level at enrollment – no previous experience, minimal previous exposure, etc.
  - Employment status upon enrollment
  - Income upon enrollment
  - Average Age
  - Other demographics, special considerations
- Number and description of industry partners engaged in curriculum development and throughout other stages of program implementation
- Trainer-to-student ratio
- Cost of program per student
- Percentage of enrolled individuals who completed training – include number of individuals enrolled, number of individuals that have completed training, and number of students seeking employment after training
- Complete summary of proposer’s post-training job placement policy, including proposer’s definition of “job placement” i.e. the criteria by which a successful placement is measured (placement period, salary, type of position – full-time / part-time / internship / contracted)
- Number of individuals who, as a result of the training, have obtained jobs in related fields
- Percentage of training completers placed in related employment within three and six months after completion of training
- Title and salary range of these jobs; please include the average, minimum and maximum annualized salaries, including whether internship, contracted, part-time or full-time.
- List the employers that hired the individuals trained and the job titles they were hired into, and whether these hires were in the City or another geographic area
- List at least three (3) employers that hired students after training who may be contacted as a reference, and the name, title, email and telephone number of a contact person at the reference entity

In addition:

- Attach a resume for each proposed instructor. If additional instructors will need to be hired, please include a description of the job qualifications that the position will require.
- Attach for each key staff position a resume and/or description of the qualifications that will be required.

**b. Organizational Capability**

Demonstrate the proposer’s organizational, technical, managerial and financial capacity to provide the work described in Section III. Specifically, proposals should address the following:

- Demonstrate the proposer has sufficient resources, including financial and human resources, to begin the Program by the expected contract start date. Demonstrate the proposer has sufficient resources, including financial and human resources, to cover costs between each reimbursement payment. **Note:** Reimbursements occur on a 30-60 day period.
- Demonstrate the proposer’s experience in developing similar programs in the City or a similar city. In particular, please provide an overview of the following:
  - Proposer’s experience (and current capacity given expertise of instructional and administrative staff) to develop trainings focused on adult learners and their specific needs;
- Demonstrate the ability to tap into the network of technology employers in the City to connect Trainees to jobs.
- List the Contractor’s current project(s) and any future training or trainings the Contractor is committed to for the duration of this contract.

In addition:

- Attach a chart showing where, or an explanation of how, the proposed services will fit into the proposer’s organization.

- Attach a copy of the proposer’s latest audit report or certified financial statement, or a statement as to why no report or statement is available.
- Attach proof that the business has been in operation for at least two (2) years.

**Note:** Proposers should complete annexed Attachment B to respond to the areas identified above relating to “Experience” and “Organizational Capability.” Proposers should attach additional sheets, as applicable, to submit their responses to the WDC if there is insufficient space or if a particular area does not appear on Attachment B.

**c. Proposed Approach**

Describe in detail how the proposer will provide the work described in Section III of this RFP and demonstrate that the proposer’s proposed approach will fulfill the WDC’s goals and objectives. The “Proposed Approach” description submitted by each proposer should not exceed five (5) pages in length. Specifically, proposals should address the following:

- Rationale as to why the proposer’s approach will be successful as a whole in the City.
- Proposed training model, including:
  - Proposed number of trainees and cohorts. Note that the WDC encourages proposers to exceed the minimum service levels set forth in this RFP whenever possible;
  - Proposed overview of training model, including, but not limited to, distribution of in-class, project based, and on-the-job training elements;
  - Proposed curricular outline (a detailed breakdown of course topics explanations as to why each one is included, overview of overall goals and outcomes, anticipated content to be covered, and identification of opportunities that will be established for industry to provide feedback on curriculum development);
  - Proposed timeline and mechanism for engaging employers both during the curriculum development stage and throughout later phases of the program;
  - Recruitment strategy and screening assessment criteria, including prerequisite skills or competencies required for the training, and any relevant aptitude tests;
  - Proposed training delivery, including:
    - Trainee requirements for training completion
    - Training schedule, including frequency (number of days per week, weekday/weekend breakdown, and total number of training sessions) and the time of day when training is to be provided, the number of hours of instruction per training, and duration of any workplace component (including, for example, work on active client projects or internships)
    - Program cohort size
    - Trainee-to-instructor ratio
    - Policy for making up missed training classes
    - Goals of the instructional plan;
  - Anticipated equipment and materials required for the Program training (such as a course book, website component, etc.);
  - Strategy to provide support as needed for Trainees beyond classroom hours, including supportive services where appropriate;
  - Monitoring and evaluation process to track each Trainee’s attendance and progress, including the metrics used to measure student progress and skill attainment;
  - Monitoring process to track participant employment status and salary attainment for at least a year following graduation from the Program;
  - Credentials expected as a result of training completion, if applicable;
  - Strategy for connecting trainees to jobs.
- Proposed strategy for documenting implementation, learnings, and best practices both for end of cohort reporting requirements and to inform revision and improvement of the program model for future replication; and

**Note:** The WDC’s assumptions regarding the proposer’s approach represent what the WDC believes to be most likely to achieve its goals and objectives. However, proposers are encouraged to propose an approach that they believe will most likely achieve the WDC’s goals and objectives. Proposers may also propose more than one approach. However, if an



3. A separate sealed outer envelope, enclosing the all of the above-referenced sealed inner envelopes. The sealed outer envelope should have **two (2) labels** containing:
  - The Proposer’s name and address, the Title and PIN of this RFP and the name and telephone number of the Proposer’s Contact Person
  - The name, title and address of the Authorized WDC Contact Person

**IF SUBMITTED ELECTRONICALLY**

1. **One** PDF or Word document labeled “Program Proposal [Proposer Organization Name]”
  - Proposal Cover Sheet (Attachment A)
  - Program Proposal (Attachment B)
    - Narrative
    - References for the Proposer and, if applicable, each Subcontractor
    - Resumes and/or Description of Qualifications for instructors and key Staff Positions
    - Documentation of past training administered by the Contractor
    - Organizational Chart
    - Proof of Business of doing business for at least two years
    - Audit Report or Certified Financial Statement or a statement as to why no report or statement is available
  - Acknowledgment of Addenda Form (Attachment D)
2. A separate PDF or Word document labeled “Price Proposal [Proposer Organization Name]”
  - Price Proposal Form (Attachment C)
3. One email with previous two files attached, which includes:
  - A subject line with the following format : Title of RFP, RFP Pin #
  - A message in the body of the email noting the Proposer’s name and address, the Title and PIN of this RFP and the name and telephone number of the Proposer’s Contact Person.
  - [emccclary@sbs.nyc.gov](mailto:emccclary@sbs.nyc.gov) in the recipient (“To”) field, and [LSantiago@sbs.nyc.gov](mailto:LSantiago@sbs.nyc.gov) in the “cc” field.

**SECTION V - PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES**

**A. Evaluation Procedures**

All proposals accepted by the WDC will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by the WDC to be non-responsive will be rejected. The WDC’s Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below. The WDC reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as the WDC deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, the WDC reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer’s initial proposal should contain its best programmatic and price terms.

**B. Evaluation Criteria**

**Awards will be made to the highest overall scorers. The criteria for evaluation and weight assigned are set forth below.**

- |  |     |
|--|-----|
| * Demonstrated quantity and quality of successful relevant experience. | 25% |
| * Demonstrated level of organizational capability.                     | 30% |
| * Quality of proposed approach.  | 45% |

- C. Basis for Contract Award.** A contract will be awarded to the responsible proposer(s) whose proposal(s) is/are determined to be the most advantageous to the WDC, taking into consideration the price and such other factors or criteria, which are set forth in this RFP. Contract award(s) shall be subject to the timely completion of contract negotiations between the WDC and the selected proposer(s). The WDC shall rank proposers by technical merit. The WDC may request best and final offers (BAFOs) and will then consider price by negotiating a fair and reasonable price with the highest technically ranked proposer(s). In the event that such price is not successfully negotiated, the WDC may conclude such negotiations, and enter into negotiations with the next highest technically ranked proposer(s), as necessary.
- D. Confidential, Proprietary Information or Trade Secrets.** Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the WDC. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the WDC.
- E. RFP Postponement/Cancellation.** The WDC reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.
- F. Proposer Costs.** Proposers will not be reimbursed for any costs incurred to prepare proposals.
- G. Applicable Laws.** This Request for Proposals and the resulting contract award, if any, unless otherwise stated, are subject to all applicable provisions of the federal Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.), New York State Law, the New York City Charter and Administrative Code, the Rules of the City of New York. In addition, contract award is subject to applicable provisions of federal, state and local laws and executive orders, including those requiring affirmative action and equal employment opportunity.
- H. General Contract Provisions.** Contracts shall be subject to the WDC’s general contract provisions, in substantially the form that they appear in the attached “Appendix A—Standard Terms and Conditions” or, if the WDC utilizes other than the formal Appendix A, in substantially the form that they appear in the WDC’s general contract provisions. Additionally, contracts shall be subject to Appendix 1, 2 C.F.R. Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards) and Appendix 2 (Combined Federal-State Certifications).
- I. Prices Irrevocable.** Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the WDC prior to contract award. This shall not limit the discretion of the WDC to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

## **SECTION VI – ATTACHMENTS**

Attachment A – Proposal Cover Sheet

Attachment B – Licensing, Experience and Organizational Capability Proposer Response Form (Program Proposal)

Attachment C – Price Proposal Form

Attachment D – Acknowledgment of Addenda

**Appendix A** - Standard Terms and Conditions

**Appendix 1** – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

**Appendix 2** – Combined Federal-State Certifications

**ATTACHMENT A**

**PROPOSAL COVER SHEET**

**RFP TITLE: Web Development Training Program**

**PIN: 2016WDC0004**

**Proposer:**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Tax Identification #:** \_\_\_\_\_

**Years in Operation** \_\_\_\_\_

**Proposer's Contact Person:**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Telephone #:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Proposer's Authorized Representative:**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

If submitted in hard copy, is the response printed on both sides, on recycled paper containing the minimum percentage of recovered fiber content as requested by the WDC in the instructions to this solicitation?

**Yes**       **No**

**ATTACHMENT B**

**LICENSING, EXPERIENCE, AND ORGANIZATIONAL CAPABILITY PROPOSER RESPONSE FORM  
(PROGRAM PROPOSAL)**

**RFP TITLE: Web Development Training Program  
PIN: 2016WDC0004**

**Proposers should provide the information requested in the tables below regarding their Experience and Organizational Capability, attaching additional pages, if necessary. This Attachment B should be included in the proposal response package submitted to the WDC.**

**I. Licensing/Accreditation**

If applicable, is your organization licensed by and registered with the New York State Bureau of Proprietary School Supervision (BPSS)?

**YES \_\_\_\_\_ NO \_\_\_\_\_**

Is your organization on the NYS Eligible Training Provider List for the training program being proposed herein?

**YES \_\_\_\_\_ NO \_\_\_\_\_**

**II. Experience**

- Previous Program Training Outcomes. Proposer's should provide the following information relating to proposer's implementation of the Web Development Training Program(s) that connect Program graduates with jobs following completion of the Training(s):

Trainer-to-student ratio:	
# of industry partners engaged in curriculum development	
# of individuals that completed training vs # of individuals enrolled:	# completed: # originally enrolled:
# of individuals that as a result of the training have obtained entry-level web development positions:	# of individuals that as a result of the training have obtained entry-level web development positions: # of individuals placed within 3 months of completion: #of individuals placed within 6 months of completion:
Salary range of those filled jobs:	\$ _____ to \$ _____
Average salary of those filled jobs:	\$ _____

- Companies/Employers that Hired Proposer's Trainees; Company Names & Titles. Proposers should list the companies that hired individual students that completed the Proposer's training, each job titles they were hired into, and salary information corresponding to each job title:  
*\*Please attach supplementary materials in a similar format to include more companies.*

Company Name	Job Titles of Hires	Number of Hires for Each Job Title	Salary(ies) for each title	Full-Time/Part-Time/Internship/Contractor
1.				
2.				
3.				
4.				
5.				

- Companies/Employers that Hired Proposer’s Trainees: References. Proposers should use the following format to provide at least three (3) employers references for companies that hired students after training.

Company #1

- Company Name: \_\_\_\_\_
- Company Address
  - Address 1: \_\_\_\_\_
  - Address 2: \_\_\_\_\_
  - City: \_\_\_\_\_
  - Zip: \_\_\_\_\_
- Company Contact First Name: \_\_\_\_\_ Last: \_\_\_\_\_
- Title: \_\_\_\_\_
- Contact Phone #: \_\_\_\_\_
- Contact Email: \_\_\_\_\_
- Notes:

Company #2

- Company Name: \_\_\_\_\_
- Company Address
  - Address 1: \_\_\_\_\_
  - Address 2: \_\_\_\_\_

- City: \_\_\_\_\_
- Zip: \_\_\_\_\_
- Company Contact First Name: \_\_\_\_\_ Last: \_\_\_\_\_
- Title: \_\_\_\_\_
- Contact Phone #: \_\_\_\_\_
- Contact Email: \_\_\_\_\_
- Notes:

Company #3

- Company Name: \_\_\_\_\_
- Company Address
  - Address 1: \_\_\_\_\_
  - Address 2: \_\_\_\_\_
  - City: \_\_\_\_\_
  - Zip: \_\_\_\_\_
- Company Contact First Name: \_\_\_\_\_ Last: \_\_\_\_\_
- Title: \_\_\_\_\_
- Contact Phone #: \_\_\_\_\_
- Contact Email: \_\_\_\_\_
- Notes:

**III. Organizational Capability**

- Start-Up Costs. Proposer’s should provide the information requested in the tables below to demonstrate that the proposer has sufficient resources, including financial and human resources, to begin the Program by the expected contract start date.

- Identify the anticipated Personnel Services (PS) costs needed to mobilize and start the contract:

# of People	Startup Task	Name of Employee(s)	Wage/Hr or Salary/Yr	% of Time*	Cost to Contract
<b>Total Wages</b>					
<b>Fringe @ __%</b>					
<b>Total Startup Personnel Costs</b>					

*\*Put 100% if the employee is working solely on this project and will have no conflicting priorities.*

- Identify the anticipated Other Than Personnel Services (OTPS) costs needed to mobilize and start the contract:

Expense	Cost to Contract	Notes (duration, number of items, etc.)
Hardware / Equipment		
Software		
Furniture		
Training Materials		
Insurance (Bonding & Liability)		
Rent		
Other OTPS Costs (identify)		
<b>Total OTPS Costs</b>		
<b>Total Start-up Personnel Costs</b>		
<b>Total Start-up OTPS Costs</b>		
<b>Total Start-up Budget (Personnel + OTPS)</b>		

- Operating Costs. Proposer's should provide the information requested in the tables below to demonstrate that the proposer has sufficient resources, including financial and human resources, to cover anticipated Program costs between each reimbursement payment. **Note: Reimbursements occur on a 30-60 day period.**

- Identify the anticipated monthly operating personnel costs for the duration of the resulting contract award:

# of People	Job Title	Name of Employee(s)	Wage/Hr Or Salary/Yr	% of Time*	Cost to Contract
<b>Total Wages</b>					
<b>Fringe @ __%</b>					
<b>Total Monthly Operating Personnel Costs</b>					

\*Put 100% if the employee is working solely on this project and will have no conflicting priorities.

Identify the anticipated monthly operating OTPS costs for the duration of the resulting contract award:

Expense	Cost to Contract	Notes (duration, number of items, etc.)
Hardware / Equipment		
Software		
Furniture		
Training Materials		
Insurance (Bonding & Liability)		
Rent		
Other OTPS Costs (identify)		
<b>Total Monthly Operating OTPS Costs</b>		

<b>Total Monthly Personnel Costs</b>		
<b>Total Monthly OTPS Costs</b>		
<b>Total Monthly Budget (Personnel + OTPS)</b>		

- Demonstrate the proposer’s experience in developing and executing similar programs in the City or a similar City.
  - Do you have experience implementing the web development training in the City or a similar city? (Yes or No) \_\_\_\_\_ and if so, in what city or cities?
    - City #1
      - City: \_\_\_\_\_ State: \_\_\_\_\_
      - Brief Description of Similar Training: \_\_\_\_\_
      - \_\_\_\_\_
    - City #2
      - City: \_\_\_\_\_ State: \_\_\_\_\_
      - Brief Description of Similar Training: \_\_\_\_\_
      - \_\_\_\_\_
    - City #3
      - City: \_\_\_\_\_ State: \_\_\_\_\_
      - Brief Description of Similar Training: \_\_\_\_\_
      - \_\_\_\_\_
  
- Demonstrate the ability to tap into the network of technology employers in the City to connect Trainees to jobs.
  - List the technology employers that you already have relationships within the City:
    - Firm 1: \_\_\_\_\_
    - Firm 2: \_\_\_\_\_
    - Firm 3: \_\_\_\_\_
    - Firm 4: \_\_\_\_\_
    - Firm 5: \_\_\_\_\_
  - List the technology employers you would target to help trainees in this program find jobs, and why:
    - Firm 1: \_\_\_\_\_
      - Why: \_\_\_\_\_
    - Firm 2: \_\_\_\_\_
      - Why: \_\_\_\_\_
    - Firm 3: \_\_\_\_\_
      - Why: \_\_\_\_\_
    - Firm 4: \_\_\_\_\_
      - Why: \_\_\_\_\_

List the Proposer’s current projects as well as any future projects or trainings (including the duration of each) that the proposer has committed to during the anticipated term of the resulting contract award. Proposer’s should attach additional pages and supplementary materials, as applicable, in a similar format to one included below)

- Current Training Project #1 if applicable:

- Start date: \_\_\_\_\_

- Finish date: \_\_\_\_\_

- Description of training:

- Future Training Project #1(anticipated term to overlap with term of the contract award resulting from this solicitation), if any:

- Start date: \_\_\_\_\_

- Finish date: \_\_\_\_\_

- Description of training:

**ATTACHMENT C**

**PRICE PROPOSAL FORM**

**RFP TITLE: Web Development Training Program  
PIN: 2016WDC0004**

**TOTAL PRICE:**     \$ \_\_\_\_\_

**TOTAL PRICE IN WORDS:**

\_\_\_\_\_

**TOTAL COST PER TRAINEE:**     \$ \_\_\_\_\_

**TOTAL NUMBER OF TRAINEES PLACED INTO JOBS:** \_\_\_\_\_

\_\_\_\_\_  
**Printed Name of Proposer**

\_\_\_\_\_  
**Signature of Proposer**

**PLEASE COMPLETE ITEMIZED BUDGET ON NEXT PAGE**

**Please Note:** In case of discrepancies between the price in words and the price in figures, the price in words will be considered the price.



**Other Than Personnel Services:** Please provide a line-by-line price proposal of Other Than Personnel Services (OTPS) costs in the table below. **Note:** The pre-populated items listed in the table below are not exhaustive and proposers are expected to list each OTPS cost for the Program on separate lines. The format below is for reference only. Please add lines as needed.

<b>Expense</b>	<b>Cost to Contract</b>	<b>Notes (duration, number of items, etc.)</b>
Hardware/Equipment		
Software		
Furniture		
Training Materials		
Insurance (Bonding & Liability)		
Other OTPS Costs (identify)		
Supportive Services (as defined by the WDC)	\$100,000	e.g. Transportation and/or nutritional assistance
<b>Total OTPS Costs</b>		

<b>Total PS Costs</b>		
<b>Total OTPS Costs</b>		
<b>Placement Bonus (maximum 10% of PS + OTPS)</b>		
<b>Total Budget (PS + OTPS + Placement Bonus)</b>		

**ATTACHMENT C (Continued)**

**PROPOSER'S PRICE PROPOSAL: KEY METRICS**

**RFP TITLE: Web Development Training Program**

**PIN: 2016WDC0004**

Proposers must complete the "Key Metrics" table below:

<b><u>Key Metrics</u></b>	
Estimated total hours of instruction per cohort	_____ hours
Estimated total duration of each cohort training	_____ weeks
Number of trainees in total	_____ students
Number of cohorts	_____ cohorts
Cost per trainee	\$ _____ per trainee

**ATTACHMENT D**

**ACKNOWLEDGMENT OF ADDENDA**

**RFP TITLE: Web Development Training Program**

**PIN: 2016WDC0004**

**Directions:** Complete Part I or Part II, whichever is applicable, and sign your name in Part III. All proposers must complete and include this page as part of their proposal package.

**Part I. Acknowledgment of Receipt of Addenda**

Listed below are the dates of issue for each Addendum received in connection with this RFP:

Addendum # 1, Dated \_\_\_\_\_, 2015

Addendum # 2, Dated \_\_\_\_\_, 2015

Addendum # 3, Dated \_\_\_\_\_, 2015

Addendum # 4, Dated \_\_\_\_\_, 2015

Addendum # 5, Dated \_\_\_\_\_, 2015

**Part II. Acknowledgement of No Receipt of Addenda**

\_\_\_\_\_ No Addendum was received in connection with this RFP

**Part III. Proposer's Name and Authorized Representative**

Proposer's Name: \_\_\_\_\_

Proposer's Authorized Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX A – Standard Terms and Conditions

**1. Contractor as an Independent Contractor.** Notwithstanding anything contained herein to the contrary, Contractor shall not be deemed to be acting as an agent, servant or employee of the Workforce Development Corporation (“WDC”), the New York City WDC of Small Business Services (“SBS”), the City of New York (the “City”), or the New York City Economic Development Corporation (EDC), by virtue of this Agreement, but shall be deemed to be an independent contractor.

**2. Indemnification.** The Contractor shall defend, indemnify and hold the WDC, SBS, the City, EDC, and the officers and employees of these entities, harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the WDC, SBS, the City, EDC, and the officers and employees of these entities, may be subjected or may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the WDC, SBS, the City, and/or EDC, from being completely indemnified by the Contractor, the WDC, SBS, the City, and/or EDC, shall be partially indemnified by the Contractor to the fullest extent permitted by Law. If applicable, Contractor shall require that each participating organization indemnify and hold harmless the WDC, SBS, the City, EDC, and the officers and employees of these entities, from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages to which the WDC, SBS, the City, EDC, and/or the officers and employees of these entities, may be subject because of any act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws, by the participating organization, its agents, employees or subcontractors in connection with this Agreement.

**3. Insurance.** Unless otherwise waived by the WDC, Contractor will, and will ensure that any subcontractors, maintain the following insurance during the term of this Agreement:

- (a) Worker’s Compensation and Disability Insurance in statutory amounts on behalf of all employees covered under this Agreement.
- (b) Employer’s Liability Insurance, in the amount of not less than \$1,000,000.00 per accident, providing compensation for bodily injury by accident or disease sustained by any employee of the insured arising out of, and in the course of, his/her participation in training.
- (c) Comprehensive General Liability Insurance in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate in Contractor’s name and naming WDC, SBS, and EDC, as additional insured there under covering claims for property damage and/or bodily injury, including death.

**4. Assignment.** The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the WDC. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

**5. Severability.** If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either Party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

**6. Modifications/Changes.** No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the party against whom same is asserted. Changes to increase or delete work may be made to this Agreement only as duly authorized in writing by the WDC. All such changes, modifications and amendments will become a part of the original Agreement. Contractors deviating from the requirements of this Agreement without a duly approved written contract modification or amendment, do so at their own risk.

**7. Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist, or to bind any of the parties hereto, or to vary any of the terms contained herein.

**8. Choice of Law.** This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

**9. Jurisdiction and Venue.** The Parties agree that any and all claims asserted by or against the WDC, SBS, the City, or EDC, arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The Parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the WDC, SBS, the City, and/or EDC, for any attorneys' fees incurred in removing the action to a proper court consistent with this Section.

**10. Provisions Required by Law.** Each and every provision of federal or state or local law, rule, regulation or order required to be inserted in this Agreement is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Agreement shall be amended by the express insertion of any such provision not so inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either Party.

**11. No Release of Liability.** The termination of this Agreement shall not release the Contractor or participating organizations, if any, from any liability to WDC arising out of any act or omission of such party in connection with this Agreement.

**12. Reductions in Federal, State and/or City Funding.** This Agreement may be funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the WDC shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

**13. Suspension or Termination.** WDC shall have the right to postpone, delay, suspend or terminate for convenience this Agreement with 30 days written notice to Contractor for any reason in the best interest of WDC as determined by WDC in its sole discretion. Any such postponement, delay, suspension or termination shall not give rise to any cause of action for damages or any other claims or rights against WDC. In the event of termination for convenience by WDC prior to completion of all services and deliverables, if any, in connection with this Agreement, Contractor shall be entitled to receive payment for costs incurred for work completed and/or services provided under this Agreement as of the date of termination, subject to WDC approval and submission of all required reports.

**14. Termination for Cause.**

A. The WDC shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the WDC;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a WDC vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Executive Director of the WDC (“Executive Director”), setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Executive Director may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Executive Director may declare the Contractor in default pursuant to this Section. Before the Executive Director may exercise his or her right to declare the Contractor in default, the Executive Director shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Executive Director may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Executive Director may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section.

E. The Executive Director, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable WDC policy. After such completion, the Executive Director shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Executive Director, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the WDC. The excess expense of such completion, including any and all related and incidental costs, as so certified by

the Executive Director, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

**15. Subcontracts.** Contractor may not enter into subcontracts for the performance of any of its obligations under this Agreement without the prior written consent of WDC.

**16. No Personal Liability.** No member, director, employee, servant, officer, or agent of WDC, SBS, the City or EDC shall have any personal liability in connection with this Agreement or any failure of WDC or the City to perform its obligations hereunder.

**17. Time For Claims.** No cause of action against the WDC in connection with this Agreement or the Program shall lie or be maintained by Contractor or participating organizations, if any, their successors or assigns, unless such action is commenced within six (6) months after (i) the termination of this Agreement, or (ii) the accrual of the cause of action, whichever is earlier.

**18. Compliance with Law.** Contractor agrees that it shall provide all services and deliverables, if any, and perform all of its other obligations under this Agreement, in accordance with all applicable federal, New York State and New York City laws, rules and regulations (collectively, “Legal Requirements”).

**19. Records Retention.** The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

**20. Audit.**

A. WDC, SBS, the Comptroller of the City of New York, the New York City WDC of Investigation, the Inspectors General (or their equivalent) of New York State and the United States WDC of Labor shall have the authority to examine, copy or remove any and all records concerning or related to this Agreement.

B. Contractor shall cooperate and assist with all program and fiscal monitoring, evaluation and close-out activities and audits conducted by WDC or its designees or any other entity authorized or permitted to perform or undertake any of the foregoing.

**21. Fiscal Procedures.**

A. Cooperation and Compliance. Contractor hereby agrees to fully cooperate and comply with all applicable rules, regulations, guidelines and policies on all fiscal matters related to this Agreement. This includes, but is not limited to, the submission and maintenance of financial records, reports and invoices, including supporting documentation.

B. Accounts. Contractor shall maintain records to track and clearly identify the funds obtained from or through the WDC related to this Agreement and all other agreements with the WDC. Upon request, Contractor shall notify the WDC of the name, locations, and account numbers of all bank accounts in which any funds pursuant to this Agreement are maintained, and of any change thereafter within five (5) days of such change.

C. Procurement Requirements. Contractor shall comply with all WDC procurement requirements, including those pertaining to the purchase of Services (including but not limited to Consulting Services), Goods, Supplies or Equipment, Procurement Records, Extent of Competition Required (including process requirements pertaining to obtaining written estimates and conducting sufficient market research), and

Disputes with Suppliers, in the manner prescribed by the WDC, other applicable provisions of Appendix A, and/or the provisions set forth below:

- 1) *Extent of Competition Required.* If applicable, Contractor shall retain records which detail the method of procurement, the basis for selection or rejection of a contractor, consultant or supplier and the basis for the contract price. If Federal or State Laws require procurement methods other than those set forth herein, then Contractor shall also comply with such procurement methods.
  1. Contractor must solicit and document at least three (3) written estimates for any payment made or obligation undertaken in connection with this Agreement for any purchase of goods, supplies, or services (including but not limited to consulting services) for amounts in excess of \$25,000. The monetary threshold applies to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity. Payments made or obligations undertaken will not be artificially divided in order to avoid the requirements of this paragraph.
  2. For any payment made or obligation undertaken in connection with this Agreement for any purchase of goods, supplies, or services (including but not limited to consulting services) for amounts between \$5,000 and \$25,000, Contractor shall conduct sufficient market research and/or competition to support its determination that the price of such purchased goods, supplies, services or equipment is reasonable. The monetary thresholds apply to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity. Payments made or obligations undertaken will not be artificially divided in order to avoid the requirements of this paragraph.
- 2) *Equipment.* Unless otherwise directed by the WDC, title to all equipment or other property purchased at a price in excess of \$500 with funds obtained through this Agreement shall be in the name of the WDC. Contractor shall properly maintain and keep in good repair all equipment acquired with funds obtained through this Agreement. Contractor shall dispose of such equipment as directed by the WDC, and shall maintain detailed records concerning such dispositions. At the WDC's request, Contractor must execute a UCC-1 to evidence the WDC's interest in equipment purchased at a price in excess of \$5,000 and to enable the WDC to perfect that interest by filing or otherwise.
- 3) *Procurement Records.* Contractor shall retain proper and sufficient bills, vouchers, duplicate receipts and documentation for any payments, expenditures or refunds made to or received by Contractor in connection with this Agreement. Contractor shall make all procurement expenditures in excess of \$1,000 by check or credit card.
- 4) *Disputes with Suppliers.* Contractor, without recourse to the WDC, shall be responsible for the settlement and satisfaction of all contractual obligations and administrative issues arising out of any procurement or leasing contracts paid with funds obtained through this Agreement.

## **22. Copyrights.**

A. Any reports, documents, data, photographs, deliverables, and/or other materials created pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the WDC shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the WDC, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the WDC. The WDC may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the WDC and set forth in the license.

B. The Contractor acknowledges that the WDC may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

C. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the WDC upon execution of this Agreement.

D. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

E. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the WDC shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work.

**23. Pre-existing Rights.** In no case shall Section 22 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

**24. Infringement (Copyright, Trademark, Patent).** Contractor shall not make any unauthorized use of copyrighted, trademarked or patented materials. Contractor agrees to defend, indemnify and hold harmless WDC, SBS, the City, EDC, and each officer, member, director, agent, and employee of WDC, SBS, the City, and EDC, against any damage or liability arising out of Contractor’s infringement or unauthorized use of any such material.

**25. Dispute Resolution.** Except as otherwise provided in this Agreement, any dispute arising under this Agreement that is not resolved by mutual agreement of Contractor and/or participating organization and WDC shall be determined by WDC in its sole discretion. Contractor shall promptly notify WDC in writing of any such dispute and the facts underlying such dispute. The WDC Executive Director or his/her designee shall furnish Contractor with written notice of its decision. Contractor agrees, and shall require the participating organizations, if any, to agree, that any decision by the WDC Executive Director or his/her designee may only be contested when a proven arbitrary and capricious standard has been applied.

**26. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors, heirs, and assigns of Contractor and WDC.

**27. Marketing.** If applicable, Contractor shall be responsible for marketing the program. Contractor shall either use marketing and enrollment materials developed or provided by the WDC, or obtain written approval from the WDC for

alternate materials and language including websites, newsletters, emails, letters, informational brochures, and enrollment agreements.

## **28. Confidentiality and Unauthorized Publicity.**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the WDC. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data.

B. The Contractor shall provide notice to the WDC within three (3) days of the discovery by the Contractor of any breach of security, as defined in § 10-501(b) of the New York City Administrative Code (“Admin. Code”), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the WDC of such steps. In the event of such breach of security, without limiting any other right of the WDC, the WDC shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The WDC shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The WDC shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the WDC’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the WDC, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 29.

E. At the request of the WDC, the Contractor shall return to the WDC any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the WDC in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the WDC, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the WDC does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 19.

F. A breach of this Section shall constitute a material breach of this Agreement for which the WDC may terminate this Agreement. The WDC reserves any and all other rights and remedies in the event of unauthorized disclosure.

## **29. Non-Discrimination: E.O. 50 -- Equal Employment Opportunity.**

A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) (“E.O. 50”), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners’, partners’ or shareholders’ race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City WDC of Small Business Services, Division of Labor Services (“DLS”); and

6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Executive Director to impose any or all of the following sanctions:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in WDC declaring the Contractor to be non-responsible.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

**APPENDIX B**  
**INVESTIGATION CLAUSE**

- A. The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction.
- B. 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 other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City or any public benefit corporation organized under the laws of the State of New York, or
- C. If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then
- D. The WDC Executive Director, Commissioner or Agency Head whose agency is a party in interest to the transaction, shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties shall attach for the failure of a person to testify.
- E. If any non-governmental party to the hearing requests an adjournment, the WDC Executive Director, Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to paragraph (G) below without the City incurring any penalty of damages for delay or otherwise.
- F. The penalties which may attach after a final determination by the WDC Executive Director, 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 an adverse determination for any person or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
  - ii. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the City.

G. The WDC Executive Director, Commissioner or Agency Head shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in subparagraphs (G)(1) and (G)(2) below. He/She may also consider, if relevant and appropriate, the criteria established in paragraphs (G)(3) and (G)(4) below in addition to any other information which may be relevant and appropriate:

1. 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.
2. 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.
3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
4. 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 (g) 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 (d) 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.

H. Definitions:

1. The term “*license*” or “*permit*” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
2. The term “*person*” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as partner, director, officer, principal or employee.
3. The term “*entity*” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.
4. 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.

I. In addition to and notwithstanding any other provision of this Agreement, the WDC Executive Director, Commissioner or Agency Head may in his/her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the non-City party or parties to this Agreement fail(s) to promptly report, in writing, to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of said non-City party or parties for any purpose which may be related to the procurement or obtaining of this Agreement by the non-City party or parties, or affecting the performance of this Agreement.