BID OPENING DATE AND TIME

ON: December 29, 2010 **AT: 10:30 A.M.**

BID NO.	PAGE	INVITATION AND BID ADVERTISED	BIDDER MUST COMPLETE BELOW
S1XW9180	1 OF 19		BIDDER AGREES TO COMPLY WITH ALL CONDITIONS OF THIS BID. UNSIGNED BIDS WILL NOT BE ACCEPTED.

This Invitation to Bid with your quotations must be received prior to the above cited bid opening date and time.

DEPARTMENT: **WATER** DIVISION: **BLS**

AWARDED

DATE

FOR THE PROCUREMENT COMMISSIONER

BIDS MUST BE RETURNED TO

CITY OF PHILADELPHIA
PROCUREMENT DEPARTMENT
MUNICIPAL SERVICES BLDG.
1401 JFK BLVD, ROOM 170A
PHILADELPHIA, PA 19102-1685

NAME AND ADDRESS OF FIRM

Federal EIN/Social Security Number

BUYER: T. VINSON
K. OWENS

TITLE OF BID **PURCHASE OF LIQUID CHROMATOGRAPH & QUADRUPOLE MASS SPECTROMETER (LC/MS/MS) SYSTEM & SUPPORT SERVICES**

Commerce Department-Office of Economic Development (OEO)
Anti- Discrimination Policy
Executive Order 02-05 – Bidder Requirements

This Invitation to Bid is issued under the Anti-Discrimination Policy described in the Mayor's Executive Order, policy and guidelines as attached. Specific instructions must be adhered to, and forms completed. Bidders are advised to review the instructions carefully. Failure to comply may disqualify the bidder. The specified ranges represent the percentage of Minority, Woman and Disabled participation that should be attained by the Bidder.

Participation Ranges

M-BE: **BEST** **EFFORTS**
W-BE: **BEST** **EFFORTS**
DS-BE: **BEST** **EFFORTS**

Any and all questions about Executive Order 02-05 and bidder compliance should be directed to the Commerce Department Office of Economic Opportunity (OEO) office at (215) 686- 6232.

BID QUESTIONS

All questions concerning this Invitation to Bid, including specifications and conditions, must be Presented prior to the bid opening date and time. Contact the Procurement Department, Public Information Center by calling **(215) 686-4721, 686-4720, or 686-4719** with questions.

For City Use Only

BID SECURITY See Conditions of Bidding	MASTER BID SECURITY		CERTIFIED CHECK SUBMITTED WITH BID	
	☐ YES	☐ NO	AMOUNT	CHECK NUMBER

CITY OF PHILADELPHIA
OFFICE OF ECONOMIC OPPORTUNITY
ANTIDISCRIMINATION POLICY- MINORITY, WOMAN AND DISABLED OWNED BUSINESS ENTERPRISES
FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS
(SEALED BID CONTRACTS)

Under the authority of Executive Orders No. 02-05, as reauthorized, and 14-08, the City of Philadelphia has established an antidiscrimination policy ("Policy") relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprises in City contracts. Executive Order 14-08 disestablished the Minority Business Enterprise Council and transferred its administrative functions under Executive Order 02-05 to the Office of Economic Opportunity ("OEO").

The purpose of this Policy is to provide equal opportunity for all businesses and to assure that City funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The City is committed to fostering an environment in which all businesses are free to participate in business opportunities without the impediments of discrimination and participate in all City contracts on an equitable basis. In accordance with the contracting requirements of the City, the City's Policy is applicable to this Invitation and Bid (hereinafter, "Bid").

The Office of Economic Opportunity has approved the following projected ranges of participation for this Bid which serve as a guide in determining each bidder's responsibility:

MBE - BEST EFFORTS
WBE - BEST EFFORTS
DSBE - BEST EFFORTS

These ranges represent the percentage of MBE, WBE, DBE[1] and/or DSBE (collectively, "M/W/DSBE") participation that should be attained by M/W/DSBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of certified M/W/DSBEs to perform various elements of the contract. The submission of a Solicitation For Participation and Commitment Form and any supporting documentation (more fully discussed below) is an element of responsiveness to the Bid and failure to submit the required information will result in rejection of your bid.

Bidder hereby verifies that all forms, information and documentation submitted to the OEO are true and correct and is notified that the submission of false information by Bidder is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. Bidder also acknowledges that if it is awarded a contract resulting from this Invitation and Bid, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2(a)(4) if, in the course of this contract,

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[1] "DBE" or "Disadvantaged Business Enterprise" means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If Bidder makes solicitation(s) and commitment(s) with a DBE, Bidder shall indicate which category, MBE or WBE, is submitted for credit.

it fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

A. M/W/DSBE PARTICIPATION

1. MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its OEO. Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency[2] at the time of bid opening will be eligible to receive credit towards the participation ranges. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at www.phila.gov/oeo/directory.

If bidder or bidder's subcontractor(s) is certified by an approved certifying agency, a copy of that certification should be furnished with the bid.

2. No bidder that seeks to meet the participation range(s) for participation by entering into subcontracts with any M/W/DSBE subcontractor shall be considered to meet the range(s) if the M/W/DSBE subcontractor does not perform a commercially acceptable function ("CAF"). A M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with the Bid), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees. The OEO may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF. If it is determined during the review of your Solicitation and Commitment Form that the work described on the Form does not constitute a CAF, your bid may be rejected. For example, a Bidder using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character described by the Bid specifications and required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

3. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Bidders will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

4. An MBE/WBE/DSBE submitting as the prime bidder is required, like all other bidders, to submit a bid that is responsive to the Policy and will only receive credit toward the relevant participation ranges (e.g., MBE range or WBE range or DSBE range) for the amount of its own work or supply effort on this Bid. In addition, the participation of an M/W/DSBE partner, as part of a joint venture created for this bid, may be credited

[2]A list of "OEO approved certifying agencies" can be found at www.phila.gov/oeo

towards the participation ranges only to the extent of the M/W/DSBE partner's ownership interest in the joint venture in accordance with the following criteria:

- The MBE, WBE or DSBE partner(s) must be identified in the OEO Registry prior to contract award;
- The M/W/DSBE partner(s) must derive substantial benefit from the arrangement;
- The M/W/DSBE partner(s) must be substantially involved in all phases of the contract including planning, staffing and daily management;
- The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital and other resources, etc).

5. In listing participation commitments on the Solicitation for Participation and Commitment Form, bidders are required to list a detailed description of the work or supply effort, the dollar amount of the quotation, and percentage of the contract the participation represents. In calculating the percentage amount, bidders may apply the standard mathematical rules in rounding off numbers. The OEO reserves the right to request clarifying information in the event of an inconsistency or ambiguity in the Solicitation For Participation and Commitment Form.

B. RESPONSIVENESS

1. A Bid responsive to the Policy is one which contains documentary evidence of the M/W/DSBEs that have been solicited and that will be used by the Bidder on the contract, if awarded; where the Bid satisfies the M/W/DSBE participation ranges for that contract, the Bidder is rebuttably presumed not to have discriminated in its selection of contract participants.

2. Bidders must submit documentary evidence of MBEs, WBEs and DSBEs who have been solicited and with whom commitments have been made in response to the participation ranges included in this Bid. Failure to submit the Solicitation For Participation and Commitment Form will result in the rejection of the Bid as nonresponsive, although the City, at its sole discretion, may allow Bidders to submit or amend the Solicitation For Participation and Commitment Form at any time prior to award. The Solicitation For Participation and Commitment Form must contain the following information:

- Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made on the enclosed document entitled "Solicitation For Participation and Commitment Form". Bidders should only make actual solicitations of M/W/DSBEs whose work or materials are within the scope of this Bid. Mass mailing of a general nature to M/W/DSBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes/subproposals. The bidder's listing of a commitment with an M/W/DSBE constitutes a representation that the Bidder has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City.

• If the Bidder has entered into a joint venture with an MBE, WBE and/or DSBE partner, the bidder is also required to submit along with the Solicitation For Participation and Commitment Form, a document entitled "Joint Venture Eligibility Information Form," available at OEO, for the City's review and approval of the joint venture arrangement.

3. If Bidder does not fully meet each of the range(s) for participation established for this Bid, Bidder must explain what efforts the bidder made to achieve the M/W/DSBE participation ranges. Bidder must demonstrate, through the submission of documentary evidence, that it took all necessary steps and made reasonable efforts to achieve the M/W/DSBE participation ranges, even if these efforts were not fully successful. OEO will evaluate the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve M/W/DSBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the bid as nonresponsive, although the City, at its sole discretion, may allow bidders to submit or amend their evidentiary submission at any time prior to award. The submission shall contain and discuss, at a minimum, the following:

• Provide reasons for not committing with any M/W/DSBEs that submitted a quote/subproposal, regardless of whether the quote/subproposal was solicited by Bidder.

• Provide list of all certifying directories used to solicit participation for this Bid.

• Provide any additional evidence pertinent to Bidder's conduct relating to this Bid including sufficient evidence which demonstrates to the OEO that Bidder has not engaged in discriminatory practices in the solicitation of and commitment with contract participants. In describing Bidder's efforts to achieve participation within the ranges, Bidder may submit any corroborating documentation (e.g., copies of advertisements for participation).

The bidder's documentary evidence will be reviewed by the OEO to ascertain whether discrimination has occurred in the solicitation or selection of contract participants. The review will include consideration of the following:

• Whether the bidder's actions were motivated by considerations of race or gender or disability. The OEO may investigate the bidder's contracting activities and business practices on similar public and private sector contracts. For example, if bidder rejects any M/W/DSBE based on price, bidder must fully document its reasons for the rejection and also demonstrate that bidder subjects non-M/W/DSBEs to the same pricing standards. OEO will investigate whether there was any attempt at good faith negotiation of price.

• Whether M/W/DSBEs were treated equally as other businesses in the solicitation and commitment process. For example, the OEO will investigate whether M/W/DSBEs are given the same information, access to the plans and requirements of the contract

and given adequate amount of time to prepare a quote/subcontract as others who were solicited by bidder. The OEO will also investigate whether M/W/DSBEs were accorded the same level of outreach as non-M/W/DSBEs, for example whether bidder short listed M/W/DSBEs for participation or solicited M/W/DSBEs at any pre-bid meetings.

• Whether the bidder's contracting decisions were based upon policies which disparately affect M/W/DSBEs. OEO will ascertain whether bidder selected portions of work or material needs consistent with the capacity of available M/W/DSBE subcontractors and suppliers. OEO will consider whether bidder employed policies which facilitate the participation of M/W/DSBEs on City contracts such as segmentation of the contract or prompt payment practices.

4. After review of the bidder's submission and other information the OEO deems relevant to its evaluation, the OEO will make a written determination that will be forwarded to the awarding City Department.

▪ If the bid is determined nonresponsive by the OEO, the applicant will be notified and may file a written appeal with the OEO within forty-eight (48) hours of the date of notification. The decision of the OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his/her designee whose decision shall be final.

C. RESPONSIBILITY

1. Upon award, the completed Solicitation For Participation and Commitment Form and accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs become part of the contract. M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including amendments). Any change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the OEO.

2. The Successful Bidder shall, within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors the proportionate share of such payment for work performed (including the supply of materials) by its M/W/DSBE subcontractors. In connection with payment of its M/W/DSBE subcontractors, the Successful Bidder agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

3. No privity of contract exists between the City and any M/W/DSBE subcontractor identified in any contract resulting from this Bid. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with the subcontracted services under Executive Orders 2-05 and 14-08 or by reason of any contract resulting from the Bid except such rights or remedies that the

M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

4. If the OEO determines that the bidder has discriminated against a M/W/DSBE at any time during the term of the contract, the OEO may recommend to the Procurement Commissioner the imposition of sanctions on the Bidder including debarment of the bidder from submitting and/or participating in future City contracts for a period of up to three (3) years.

D. ACCESS TO INFORMATION

1. The OEO shall have the right to make site visits to the Bidder's place of business and/or job site and obtain documents, such as quotations, and information from any Bidder, subcontractor, supplier, manufacturer or contract participant that may be required in order to ascertain a Bidder's responsiveness and responsibility.

2. Failure to cooperate with the OEO in its review may result in a recommendation to terminate the contract.

E. RECORDS AND REPORTS

1. The Successful Bidder shall maintain all books and records relating to its M/W/DSBE commitments (e.g. copies of quotations, subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least three (3) years following acceptance of final payment. These records shall be made available for inspection by the OEO and/or other appropriate City officials. The Successful Bidder agrees to submit reports and other documentation to the OEO as deemed necessary by the OEO to ascertain the successful bidder's fulfillment of its M/W/DSBE commitments.

F. REMEDIES

1. The Successful Bidder's compliance with the requirements of Executive Orders 2-05 and 14-08, including the fulfillment of any M/W/DSBE commitments, is material to the contract. Any failure to comply with these requirements constitutes a substantial breach of the contract. It is further understood and agreed that in the event the City determines that the Successful Bidder hereunder has failed to comply with these requirements the City may, in addition to any other rights and remedies the City may have under the contract, any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies, as deemed applicable, which shall be deemed cumulative and concurrent:

a. Withhold payment(s) or any part thereof until corrective action is taken.

b. Terminate the contract, in whole or in part.

c. Suspend/Debar the Successful Bidder from proposing/bidding and/or participating in any future City contracts for a period of up to three (3) years.

d. Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment

shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City. For Concessions, the "total dollar amount of the contract" shall mean the Concession Fee paid to the City.)

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this Bid nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors.

ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM
Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises

DEPARTMENT OF COMMERCE
OFFICE OF ECONOMIC OPPORTUNITY (OEO)

Bid Number: | *Name of Bidder:* | *Bid Opening Date:*

List below ALL MBE/WBE/DBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.

☐ MBE ☐ WBE ☐ DSBE ☐ M-DBE ☐ W-DBE	Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name		By Phone	By Mail	Yes (If Yes, give date)	NO	
Address						
Contact Person		Quote Received		Amount Committed To		
Telephone Number / Fax Number		YES	NO	Dollar Amount $		
Email Address				Percent of Total Bid %		
OEO REGISTRY # / CERTIFYING AGENCY						

☐ MBE ☐ WBE ☐ DSBE ☐ M-DBE ☐ W-DBE	Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name		By Phone	By Mail	Yes (If Yes, give date)	NO	
Address						
Contact Person		Quote Received		Amount Committed To		
Telephone Number / Fax Number		YES	NO	Dollar Amount $		
Email Address				Percent of Total Bid %		
OEO REGISTRY # / CERTIFYING AGENCY						

☐ MBE ☐ WBE ☐ DSBE ☐ M-DBE ☐ W-DBE	Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name		By Phone	By Mail	Yes (If Yes, give date)	NO	
Address						
Contact Person		Quote Received		Amount Committed To		
Telephone Number / Fax Number		YES	NO	Dollar Amount $		
Email Address				Percent of Total Bid %		
OEO REGISTRY # / CERTIFYING AGENCY						

1. If Bidder makes solicitation(s) and commitment(s) with a DBE, Bidder shall indicate which class type, M-DBE or W-DBE, is submitted for credit.
2. Attach all quotations to this form.

09/2010

SECTION 1: GENERAL BID SUBMISSION

1.1 TITLE: Purchase of Liquid Chromatograph & Triple Quadrupole Mass Spectrometer (LC/MS/MS)System & Support Service

1.2 CONTRACT TERM: Date of Award through one year ("Initial Term"), with an option to renew for up to three (3) additional one (1) year periods, ("the Renewal Term") exercisable, at the City's sole discretion, as of the expiration of the Initial Term or then current Renewal term. The City may, at its sole discretion, renew the contract for up to three (3) months at the beginning of each renewal period(s) (the "Additional Performance Period"), if a decision has been made not to renew the contract for an entire year.

1.2.1 The City shall exercise such sole option to renew the Contract Term by issuing a letter (the "Renewal Notice") notifying the Contractor that the Contract is renewed for the Renewal Term or Additional Performance Period (identified by commencement and termination dates) that is specified in the Renewal Notice. The Contract shall be deemed to be renewed for such Renewal Term or Additional Performance Period, and Contractor shall be obligated to perform all terms and conditions of the Contract throughout such Renewal Term or Additional Performance Period, as of the effective date indicated on the City's Renewal Notice, whether or not Contractor has agreed, verbally or in writing, to such renewal of the Contract term.

1.2.2 If an individual Performance Bond and/or Payment Bond is required under this Invitation and Bid, such bond(s) shall be and remain in full force and effect throughout the Initial Term, all Renewal Terms, any Additional Performance Period, and the period of any unexpired warranty provided or required under the Contract, without notice of Contract renewal by the City to the surety or the consent of the surety thereto. It is the sole responsibility of the Contractor to ensure that such bond(s) remain in full force and effect as provided in this Section 1.2.2, and failure to do so shall be an event of default pursuant to Section 15, Default, of the attached Data Processing Agreement.

If participation in the City's Master Performance Security Program is required under this Invitation and Bid, Contractor shall pay the required annual fee for such participation for each Renewal Term upon the issuance of the Renewal Notice.

1.3 CONTRACT TYPE: **REQUIREMENTS**

1.3.1 The following items are required in the operation of various City agencies as ordered. Exact quantities cannot now be determined but estimates thereof are listed herein. Quantities listed may be increased or decreased to meet the requirements of the City during the period of this contract. A minimum is not guaranteed.

Purchase orders issued as a result of this bid will be for materials or services to be delivered generally on an as-needed basis. Successful bidders are cautioned not to deliver any materials or services without first being advised to do so by the ordering agency.

1.3.2 It is the intent of the Procurement Department to make an award for the period as stated above subject to the appropriation of funds in succeeding fiscal year/years by City Council. The City's fiscal year is from July 1st to June 30th inclusive.

Commodities or services on the bid to be ordered after the end of the fiscal year are subject to the issuance of purchase orders for the following fiscal years. The City is not liable for the award involving following fiscal years' funds until such orders are issued.

The successful bidder(s) obligation to deliver on such purchase orders shall not take effect until the orders are issued. To simplify the contract procedure, however, the successful vendor will be required to furnish a Performance Bond or Performance Security Fee to cover units awarded to him.

1.4 METHODOLOGY OF ACQUISITION: Purchase only.

1.5 STATEMENT OF DIRECTION:

1.5.1 It is the intent of the City of Philadelphia to make an award for the Purchase of Liquid Chromatograph & Triple Quadrupole Mass Spectrometer (LC/MS/MS)System & Support Services for the Water Department, Bureau of Laboratory Services as specified herein during the contract period.

1.6 BID SECURITY

1.6.1 Bid security shall be based upon **cumulative bid amount per Section 5.**

All bids submitted with a total greater than $30,000.00 must be accompanied by the proper Bid Security.

Bidders already enrolled in the City's Master Bid Security Program for July 1, 2010 to June 30, 2012 are not required to provide Bid Security if their bid total is $500,000.00 or less (per paragraph 2 of "Terms and Conditions of Bidding and Contract").

The Master Bid Security Program allows bidders to qualify for bid security for individual bids submitted during the covered bidding period provided the individual bid total is $500,000.00 or less.

1.6.2 **Bids Opening July 1, 2010 through June 30, 2012**
Bidders may qualify for the Master Bid Security Program described above for **July 1, 2010 – June 30, 2012** by submitting a check in the amount of **$175.00** made payable to the City of Philadelphia. The check should be submitted, under separate cover, to the Bid Unit Supervisor at least one day prior to the first bid that the bidder wants covered under the program and is *non-refundable.*

Or if, and only if, the bidder chooses to submit the check for the Master Bid Security Program with their bid, the check **MUST** be in the form of a Certified, Treasurer's or Cashier's Check, Bank or United States Postal Money Order and is non-refundable.

1.6.3 If the bidder is not enrolled and does not intend to enroll; or if the total value of the bid submitted exceeds $500,000.00, the Master Bid Security Program is not applicable. Bidders instead MUST submit with their bid a refundable Certified, Treasurer's or Cashier's Check, Bank Money Order or United States Postal Money Order in the amount of $4,000.00.

1.7 BID INFORMATION:

1.7.1 All information concerning this bid will be contained in this bid document as issued or amended.

1.7.2 Information provided verbally by any City official shall not be binding or relevant.

1.8 BID SUBMISSION:

1.8.1 Bid information must be submitted to the City of Philadelphia no later than the time and date for the bid opening.

1.8.2 Advertised sealed bids will be received and read publicly at 10:30 AM in Room #170A, 1st Floor, Municipal Services Building, 1401 JFK Boulevard.

1.8.3 Bid should be complete and include ALL information required as described in the various paragraphs of the bid specifications.

1.8.4 All pricing must be completed on the forms provided; be complete; and be in ink or typed.

1.8.5 The bid must be complete as to required bid signatures and corporate seal, and fully accept the terms and conditions contained in the bid.

1.8.6 In accordance with the City of Philadelphia's Regulations Relating to Local Bidding Preferences for Procurement Contracts, this bid may be subject to a 5% local bid preference. In order to determine eligibility to receive the 5% preference, if applicable, **bidder or subcontractor must be certified at the time of the bid opening and must submit with the bid the Local Business Entity Certification number** as issued by the Procurement Department for the prime contractor or the applicable subcontractor. If the prime relies upon its subcontractor's LBE status in order to be eligible for the preference, the name and certification number of the subcontractor **must** be submitted with the bid. **Failure to submit the prime's LBE certification number or the subcontractor's name and the LBE certification number with the bid will deem bidder ineligible for the 5% preference.**

Further, by submission of this bid, bidder makes the following certification in connection with the grant of any local bidding preference:

"I certify, that if awarded this contract on the basis of application of the LBE preference, my company or my subcontractor, throughout the entirety of this contract, will perform the majority of the work under this contract within the geographic limits of the City of Philadelphia, and I will, or cause my subcontractor to, maintain within the City a majority of the inventory or equipment that will be used on this contract or the amount of inventory that is customary for this industry."

Prime or subcontractor's LBE Certification Number_____

If applicable:
Subcontractor's Name_____

NOTE: If you wish to apply for Local Business Entity (LBE) certification, go to www.phila.gov/bids. Please provide sufficient time prior to bidding for processing of the LBE application.

1.8.7 **BID PROCESSING FEE:**
For purposes of this bid ONLY, bidder MUST submit with their bid a non-refundable check or money order payable to the City of Philadelphia in the amount of $50.00 to cover the bid processing fee. Failure to submit the bid processing fee may result in disqualification from bidding.

1.8.8 CONTACT PERSON:

PRE-AWARD:
Indicate below to whom in your firm questions concerning this Invitation and Bid should be directed:

Name:_____

Address:_____

City/State/ZC:_____

Telephone No.(_____)_____ Ext.:_____

Fax No.(_____)_____

E-mail address_____

Vendor's WEB address_____

POST-AWARD:
Indicate below to whom in your firm questions concerning the Contract resulting from this Invitation and Bid should be directed:

Name:_____

Address:_____

City/State/ZC:_____

Telephone No.(_____)_____ Ext.:_____

Fax No.(_____)_____

E-mail address_____

Vendor's WEB address_____

1.8.9 BID QUESTIONS OR PROBLEMS

In preparing the bid response, should any bidder need clarification on the bid requirements, identify a discrepancy in the specifications, determine that a specified product has been discontinued or an alternate procedure is advised, etc.; then the bidder is **STRONGLY** encouraged to bring these issues to the attention of the Procurement Department prior to the bid opening by calling (215) 686-4720 or 4721, or by addressing a letter or fax (fax # 215-686-4727) to the Buyer. Questions, whether written, phoned or faxed should be received no later than seven (7) calendar days prior to the scheduled opening date of the bid. The City reserves the right to only respond to those questions submitted prior to the stated deadline. If it is in the City's best interest to do so, the bid **MAY** be amended to reflect the proposed changes/modifications. Exceptions taken **DO NOT** obligate the City to change the specifications.

The City of Philadelphia, Procurement Department will notify all bidders in writing, by addendum duly issued, of any interpretations/changes made to specifications or instructions. The City will not accept responsibility for oral instructions, suggestions or changes by any City agency.

1.9 BIDDER QUALIFICATION:

1.9.1 All bidders must be a bona fide manufacturer of, or dealer in, the article or service specified within the bid. To demonstrate this, Bidders will submit at least three references for both the front end HPLC system, and the MS/MS system currently used in municipal, state or federal laboratories. Addresses, telephone numbers, and contacts at the facilities must be provided.

Please note that reference information in each section must be completed. Failure to submit this information may result in the bidder's disqualification.

SECTION 1:

Customer Reference other than an employee or department of the City of Philadelphia, (excluding suppliers or financial institutions).

Firm Name:	_____	_____	_____
Contact Name:	_____	_____	_____
Phone No.:	_____	_____	_____
Type Work:	_____	_____	_____
Years dealing w/your firm:	_____	_____	_____

SECTION 2:

Previous purchase order(s)/contract(s) with the City of Philadelphia; (State "None" if applicable).

Dept. Name:	_____	_____	_____
Contact Name:	_____	_____	_____
Phone No.:	_____	_____	_____
PO#/Contract#:	_____	_____	_____
Items:	_____	_____	_____

Note: **Do not provide the name and phone number of a Procurement Department Buyer in this section. Contact name(s) and phone number (s) must be from a City ordering department.**

Section 2: Specifications

2.1 Successful bidder shall provide the City of Philadelphia Water Department, Bureau of Laboratory Services (BLS) with a high performance Liquid Chromatograph and Triple Quadrupole Mass Spectrometer (LC/MS/MS) System and Support Service. The system must be suitable for method development, routine work, and unknown fast product ion scanning for qualitative and quantitative analysis.

The attached Data Processing Agreement (DPA) shall apply to this Invitation and Bid (IAB). In the event that the requirements of this IAB document conflict with any of the requirements of the attached Data Processing Agreement (DPA), the requirements of the IAB shall prevail.

2.2 **System Components:**

The HPLC component must:

- be capable of operating pressure of at least 9,000 psi
- have a flow accuracy of ± 1.0%
- have a flow precision of ±0.075%
- have a quaternary pumping system capable of sustaining 5 to 1000 uL/min
- multi-segment gradient capability 100% aqueous with modifiers to 100% organic solvents
- gradient mixing composition accuracy of ± 0.5%
- autosampler capable of at least 0.1 microliter injection volume repeatability
- autosampler injection repeatability of ± 0.1% RSD
- column oven capable of holding at least 60 C consistently for at least 24h
- local interface panel which allows for system operation
- option for adding large variable volume injection pump for the purpose of automated solid phase extraction automated solvent path switching valves
- option for in-line degasser add-on.
- solvent tray capable of holding at least 6 1-L bottles
- option to add a photodiode array (PDA) detector

The Mass Spectrometer component must :

- detect mass ranges m/z from at least 10 to no less than 2800 AMU in Q1 and Q3
- dynamic range of 1 counts per second to 4,000,000 counts per second.
- capable of scan modes MS Scan, MS/MS product ion scan, MS/MS neutral loss/gain scan, SIM and MRM
- capable of ionization sources: atmospheric pressure chemical ionization (APCI), and positive and negative ion electrospray ionization (ESI)
- maintain mass stability of 0.1 atomic mass units over 8 hours under normal operating conditions.

- quantify molecules using isotope dilution or multi-point calibration

- meet sensitivity requirement of ESI in MRM mode on m/z ratio 609/195 on 5uL injection of 1pg/uL reserpine with S/N ratio >4200:1
- manual and auto-tuning options
- local interface panel which allows for system operation
- at least 2400 amu/sec scan speed in RF/DC and at least 3800 amu/sec scan speed in rapid scan mode

Vacuum system sufficient to maintain full mass spectrometer performance.

An interfaced data system must be provided with the following:
- automatic peak detection
- output mass spectral data
- recognize a chromatographic peak within any given retention time window
- must allow integration of the ion abundance of any specific ion within any specified time or scan number limits
- calculate relative response factors
- construct linear regressions or quadratic calibration curves
- calculate analyte concentrations

In addition, a full (as of RFP publication) herbicide/pesticide, personal pharmaceutical care product, endocrine disrupting compound mass spectral reference library must also be provided, as well as continuing services for library development.

System must come equipped with a minimum of Windows XP Professional, or equivalent, based PC with a minimum of 2GB RAM (expandable to 8GB). The PC will have all drivers necessary to run the system factory installed, or installed during on-site system set-up.

The system must at least meet the performance requirements of EPA methods requiring LC/MS/MS technology including 1694, 521, 549.2, 535 rev. 1.1, 536, and 537 rev 1.1.

2.3 **Installation and Configuration:**

The awarded vendor shall be responsible for providing installation and configuration of all hardware and software. Installation and configuration charges shall be included into the purchase price of the system.

2.4 **On-site System Training:**

The awarded vendor will provide On-site, System Training for a Minimum of One (1) PWD employee, as well as follow-up phone support and troubleshooting services as required.

2.5 **Warranty:**

All hardware and software to be delivered under this contract must carry the Original Equipment Manufacturer's warranty or a minimum of One (1) year, which ever is greater, that will commence upon acceptance of the hardware and software by the City.

Upon Completion of the Warranty period the awarded vendor shall provide continued hardware and software support service for up to Three (3) additional years at the option of the City.

2.6 **System Hardware and Software Support (Upon completion of the Warranty period):**

System Hardware and Software Support Services will be provided under the auspices of the awarded vendor bidding on the contract regardless of the manufacturer of auxiliary instrumentation.

During that term, the vendor will supply 24 hour - 7 days per week technical phone support, guaranteeing a return phone call to further the resolution of the described problem within one working day (Monday through Friday 9AM - 5PM EST). A replacement or on-site repair of all non-consumable hardware and software products should be available within 72 hours of a BLS representative reporting the problem to the vendor.

The awarded vendor will make software updates readily available for the product(s). The awarded vendor will also provide technical support in the event that any part of the System becomes unusable because of the vendor supplied software updates.

2.7 **Bidders shall submit firm pricing in Section 5 for each of the following Items:**

2.7.1 **#41730-003-050**
Lot price for high performance Liquid Chromatograph and Triple Quadrupole Mass Spectrometer (LC/MS/MS) System, to include installation and configuration of all hardware and software (Reference: Paragraphs 2.2 & 2.3).

2.7.2 **#26003-012-001**
Lot price for On-site, System Training for a Minimum of One (1) PWD employee, as well as follow-up phone support and troubleshooting services as required (Reference Paragraph 2.4).

2.7.3 **#26003-012-002**
System Hardware and Software Support; Year 2 of the Contract period, (Reference Paragraph 2.6)

2.7.4 **#26003-012-003**
System Hardware and Software Support; Year 3 of the Contract period, (Reference Paragraph 2.6)

2.7.5 **#26003-012-004**
System Hardware and Software Support; Year 4 of the Contract period, (Reference Paragraph 2.6)

2.8 **Delivery Location:**

City of Philadelphia Water Department
Bureau of Laboratory Services
1500 E. Hunting Park Avenue
Philadelphia, Pa. 19124
Attn: Earl Peterkin

Bidder To Complete Section 5, “Type of Transport”.

BIDDER SPECIFY IF DELIVERY IS OTHER THAN 30 DAYS: _____

SECTION 3: BID EVALUATION AND AWARD

3.1 EVALUATION

3.1.1 Bid will be evaluated by the Procurement Department.

3.1.2 Bids will be evaluated for responsiveness to the bid specifications and for responsibility of the bidders.

3.1.3 Bids which are determined to be non-responsive for reasons of:

(i) improper bid security
(ii) improper bid execution
(iii) incompleteness
(iv) offering counter terms and conditions
(v) improper or incomplete execution of OEO documents (if applicable)

may be disqualified by the City without notice to the bidder. The decision of the City is final.

3.1.4 Bidders whose bids are determined to be non-responsible for reasons of bidder qualification shall be notified by the City of the reasons

for the determination and may contest the finding of non-responsibility through the prescribed procedures described in paragraph 25.h of “Data Processing Agreement”.

3.2 AWARD

3.2.1 This Invitation and Bid shall be awarded as a whole to the lowest responsive and responsible bidder. Bidder must bid all items to be eligible for award.

3.2.2 If the 5 % local bid preference is applicable, the total bid price or total section price of the certified Local Business Entity (LBE) will be multiplied by .95 and rounded to the second decimal place. The adjusted bid price of the LBE will then be used in determining the lowest responsive and responsible bidder.

Unless the Procurement Commissioner determines not to grant a preference for the reasons stated in subsection b., of the LBE Regulation, an LBE, whose bid is otherwise responsive and responsible and who has submitted the information required above, shall be granted a five percent bid preference on competitive bid(s) awards that are over $30,000.00 and awarded as a whole or by section.

3.2.3 Performance Security

If the total award amount is $500,000 or less, bidders attention is directed to paragraph 22 of "Data Processing Agreement", for the required Performance Security.

Please note however, that all awards as a result of this bid will have a minimum contract amount of $30,00.01. All awards at the $30,000.01 amount will be subject to a $50.00 Master Performance Security Fee.

3.2.4 **City of Philadelphia-Business, Corporate and Slavery Era Insurance Disclosure**

In accordance with Section 17-104 of The Philadelphia Code, the Bidder, after execution of this Contract, will complete an affidavit certifying and representing that the Bidder (including any parent company, subsidiary, exclusive distributor or company affiliated with Bidder) has searched any and all records of the Bidder or any predecessor business entity regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

The Bidder expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph

shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of the Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

3.2.5 Insurance

Insurance is a requirement for this bid in accordance with Paragraph 21 of the "Data Processing Agreement". No contract will be executed nor purchase order issued unless and until all required insurance certificates, in the required amount, are received. **All insurance MUST meet the following requirements:**

- Insured must be in the same name and address as the Bidder
- The insurance carrier must be rated "A" or better by AM Best
- The certificate holder must be the City of Philadelphia, and specifically named as an additional insured on the certificate in the "Description of Operations section."
- Certificate must be signed by an authorized representative of the insurance company/carrier

All certificates are to be sent to the Office of Risk Management, One Parkway, 1515 Arch Street, 14th Floor, Philadelphia, PA 19102, Attn. Debbie Lawton or FAX to (215) 683-1705.

SECTION 4: CONTRACT MANAGEMENT

4.1 CITY OF PHILADELPHIA RESPONSIBILITY

4.1.1 Order Against Contracts

(i) Subsequent to contract conformance of a Requirements bid, purchase orders will be issued at such time that the product and/or service is needed. Such purchase orders will show if delivery is to be made upon receipt of order, or only after notification by the using department.

4.1.2 Invoices shall be submitted after delivery and acceptance of the Product or service by the City. The City attempts to process invoices in a timely manner. Delays can occur because of incomplete or inaccurate invoicing information. Please make sure that invoices

contain the information as specified in Section 4.2.9., this is necessary to process payments to the Contractor as quickly as possible. Invoices which are not in accordance with the instructions in section 4.2.9 will be rejected for correction.

4.1.3 The using agencies and departments are responsible for monitoring the services and/or products delivered as described in the contract. If any problems arise, a letter should be sent to the vendor requesting resolution by a specified date. A copy should be sent to the buyer. If vendor does not resolve the breach of contract by the requested date the matter should be turned over to the buyer.

4.1.4 **ADD-ONS:**
The City reserves the right to add, delete and/or acquire products/services that the vendor can supply that are similar to, but not specifically called for in this bid. The procedure for such acquisitions shall be as follows:

Procurement or the using department will obtain from the Vendor a letter (on his/her letterhead) verifying the items to be added. The letter shall include the complete description of the item, the location (if applicable), the bid number bid schedule number, the price to the City and the applicable contract period; and upon receipt and approval by the Procurement Department shall automatically become part of the contract. **The City, however, reserves the right to accept or reject the letter and to acquire the supplies or materials in the open market.**

4.2 VENDOR RESPONSIBILITY

4.2.1 Contractor may deliver only products, services or equipment as authorized in the contract and only after receipt of a purchase order or other authorized document from the Procurement Department. All orders must be in writing. Contractor shall not accept verbal delivery requests until after receipt of purchase order or other authorizing document from Procurement.

4.2.2 Contractor may deliver only products, services or equipment at the prices quoted in the contract and that are reflected on a purchase order or a change to a purchase order (a change to a purchase order is issued whenever the items, unit price, total amount, or terms and conditions change from the original purchase order).

4.2.3 Contractors may deliver products, services or equipment up to the dollar limit of the purchase order and for the period shown on the purchase order. Contractors are requested to carefully monitor obligations against purchase orders and inform the departments of anticipated funding shortfalls.

4.2.4 DELIVERY:

Unless otherwise specified in Section 2, noted by bidder in Section 5, and/or approved by the Using Agency, delivery of product and/or service will be made within 30 days from date requested by Using Agency. VENDOR NOTE: In Section 5, specify delivery if other than 30 days.

4.2.4.1 Liquidated Damages

Liquidated Damages in the amount of 5% of the unit price may be applied to each item which exceeds the delivery schedule/requirement.

4.2.5 In the event that the contractor receives an order for products, services or equipment not specifically priced and incorporated into the contract, they must:

(i) bring this to the immediate attention of the Procurement Dept., and
(ii) notify the ordering agency in writing and refuse to deliver.

4.2.6 Should products, services, or equipment be delivered that are not specifically incorporated and priced into the contract, and/or be delivered without purchase order, the City shall have no obligation for payment.

4.2.7 For delivery of products or equipment, contractors shall honor and be paid for orders placed until the close of business of the date of purchase order expiration. Delivery of product may occur following purchase order expiration, so long as the order was placed prior to the purchase order expiration date.

4.2.8 For performance of services, contractor shall honor and be paid for orders placed until the close of business of the date of purchase order expiration. Performance of services may occur following purchase order expiration, so long as the order was placed prior to the purchase order expiration date.

4.2.9 Invoices/Receipts

4.2.9.1 Successful bidder(s) agrees not to invoice more than once per month per purchase order.

4.2.9.2 Invoices should be sent in triplicate to each ordering department: One (1) original and two (2) copies of fully itemized invoices. Failure to submit invoices in the form noted below will cause a delay in payment.

(a) After the delivery or services have been completed the Contractor must submit three (3) copies of the invoice for payment to the receiving department listed on the purchase order.
(b) The invoice must correctly reference the purchase order number, the vendor name, address and Federal Employer Identification number.
(c) Checks will only be made payable to the company name as shown on the purchase order; the invoice must reflect this same company name as the “pay to”.
(d) The invoice must show the quantity and type of item or service and the price.
(e) The unit of purchase on the invoice must agree with the unit cited on the purchase order. Reference to the specific line item is helpful.

4.3 **VENDOR ACCEPTANCES – IN SUBMITTING AN EXECUTED BID, THE BIDDER AGREES TO THE CONTRACT MANAGEMENT PROCEDURES IN THIS SECTION.**

SECTION 5: PRICING

(PRICES QUOTED MAY NOT EXCEED THREE (3) DECIMAL PLACES)

Unit pricing quoted below will prevail in case of any discrepancy(ies) between unit price and the extended amount and will be the determining factor in establishing applicable contract amount(s)/award.

5.1 High Performance Liquid Chromatograph and Triple Quadrupole Mass Spectrometer (LC/MS/MS) System and Support Service

		QTY	UNIT	UNIT PRICE	EXTENDED AMOUNT
5.1.1	**#41730-003-050** Lot price for high performance Liquid Chromatograph and Triple Quadrupole Mass Spectrometer (LC/MS/MS) System, to include installation and configuration of all hardware and software (Reference: Paragraphs 2.2 & 2.3).	1	LO	$_____	$_____

State Manufacturer:_____

State Model Number:_____

5.1.2	**#26003-012-001** Lot price for On-site, System Training for a Minimum of One (1) PWD employee, as well as follow-up phone support and troubleshooting services as required (Reference Paragraph 2.4).	1	LO	$_____	$_____

EXTENDED

		QTY	UNIT	UNIT PRICE	AMOUNT
5.1.3	**#26003-012-002** System Hardware and Software Support; Year 2 of the Contract period, (Reference Paragraph 2.6)	1	YR	$_____	$_____
5.1.4	**#26003-012-003** System Hardware and Software Support; Year 3 of the Contract period, (Reference Paragraph 2.6)	1	YR	$_____	$_____
5.1.5	**#26003-012-004** System Hardware and Software Support; Year 4 of the Contract period, (Reference Paragraph 2.6)	1	YR	$_____	$_____

Extended Total Bid Amount $_____
(Unit Price X Quantity for all items bid).

BIDDER TO STATE HOW PRODUCT(S), SUPPLIES AND/OR PARTS ARE TO BE DELIVERED TO THE CITY OF PHILADELPHIA: (E.G. ON-SITE DELIVERY VIA AWARDED VENDOR'S TRUCK, UNITED PARCEL, U.S. POSTAL SERVICE ETC.).

TYPE OF TRANSPORT: _____

BIDDER SPECIFY IF DELIVERY IS OTHER THAN 30 DAYS: _____

CITY OF PHILADELPHIA

PROCUREMENT DEPARTMENT

DATA PROCESSING AGREEMENT

Invitation and Bid No. S1XW9180

CITY OF PHILADELPHIA
PROCUREMENT DEPARTMENT

DATA PROCESSING AGREEMENT

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CITY OF PHILADELPHIA
PROCUREMENT DEPARTMENT
DATA PROCESSING AGREEMENT

1. SCOPE, EFFECTIVE DATE, AND TERM OF CONTRACT

The undersigned, hereinafter called "Contractor" or "Bidder," by signing the Invitation and Bid as provided in pages 1-51 of this Data Processing Agreement ("DPA"), agrees to furnish to the City of Philadelphia (the "City") the data processing and other equipment and products, the computer software, and/or the services that are described in the product and/or service specifications and requirements set forth in the Invitation and Bid, in accordance with such specifications and requirements, the Price Schedule, and the terms and conditions set forth in this DPA and elsewhere in the Invitation and Bid. Unless otherwise stated in an addendum issued by the Procurement Department, the Contract shall be effective as of the date set forth in Section I, *General Bid Submission*, of the Invitation and Bid (provided that all other conditions of a contract binding on the City, as set forth in Paragraph 25.i. below, are fully satisfied), and the initial term and renewal terms, if any, of the Contract shall be as set forth in such Section I.

2. DEFINITIONS - The following terms shall have the meanings specified for them, wherever they occur in this Data Processing Agreement (and, as applicable, elsewhere in the Invitation and Bid), whether or not they are capitalized. Such meanings shall be applicable to both the singular and plural of the term defined; whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa; and pronouns of any gender shall be deemed to include and designate the masculine, feminine and neuter gender. The definitions and explanations set forth in this Paragraph 2 are an integral part of the terms and conditions of the Contract.

a. BID, BIDDER; CONTRACTOR - This Invitation And Bid, properly executed by the bidder and submitted to the Procurement Department in accordance with its requirements, constitutes the Bid. The Bidder is the entity submitting and signing, by its authorized signatory, the Invitation And Bid. The successful bidder, whose bid is signed by the Procurement Commissioner and becomes the Contract, is also referred to as the "Contractor."

b. CONTRACT - The Invitation And Bid, properly executed by the successful bidder as required below, shall become the Contract upon, but only upon, execution by the Procurement Commissioner and the satisfaction of all set forth in Paragraph 25.i. The Contract shall consist of all of the documents constituting the Invitation And Bid (as set forth in Paragraph 2.l), as executed by the bidder and the Procurement Commissioner, together with all Purchase Orders issued by the Procurement Department pursuant to the Contract; the term "Contract" shall refer collectively to such documents.

c. DATA PROCESSING AGREEMENT or DPA - The term "Data Processing Agreement" or "DPA" shall refer to that part of the Contract consisting of this document (Paragraphs 1-27 and pages 1-51 hereof), together with all exhibits and attachments hereto.

d. DAY- Calendar day, unless business day is specified

e. EQUIPMENT - An all-inclusive term which, depending upon the procurement, refers either to individual machines (including related components/devices) or to a complete data processing system or subsystem.

f. OPERATING SYSTEM SOFTWARE - All programs ordered with and innately necessary for the operation of the equipment ordered hereunder, as well as other programming generally made available by the equipment manufacturer without separate charge.

g. APPLICATION SOFTWARE - Any program that may be ordered under this contract that performs a specific functional application as required by the City.

h. UNMODIFIED APPLICATION SOFTWARE - Any application software ordered under this contract that can be installed or delivered without program code changes.

i. MODIFIED APPLICATION SOFTWARE - Any application software ordered under this contract that requires program code changes to meet City requirements prior to delivery or installation.

j. EQUIPMENT FAILURE - A malfunction in the equipment or software furnished hereunder.

k. INSTALLATION DATE - The date(s) set forth in the bid specifications by which Contractor must have delivered and installed and have ready for use by the City, the equipment, operating system software and/or application software identified in the bid specifications for "Delivery and Installation."

l. INVITATION AND BID - "Invitation and Bid" refers, collectively, to the documents by which bids are solicited for this procurement, including all of the following: (i) the form titled "Invitation And Bid" and bearing the "Bid No." for this procurement; (ii) this Data Processing Agreement ("DPA"); (iii) all attachments, exhibits, and appendices to such form and to this DPA; and (iv) all addenda to the Invitation and Bid issued by the Procurement Department. The terms "bid specifications," "bidding specifications," "bid requirements", and "bidding requirements" shall mean the Invitation And Bid wherever they are used in this DPA and elsewhere in the documents comprising the Invitation And Bid.

m. DELIVERY DATE - The date set forth in the Purchase Order and/or bid specifications by which Contractor must have delivered to the City's site the equipment, operating system software, and/or application software identified in the bid specifications for "Delivery."

n. MACHINE - An individual unit identified by type and model including model upgrades and features such as a processor, an additional memory unit, a tape unit, a card reader, a terminal, a controller, etc., unless the context requires individual reference to model upgrades and features.

o. MECHANICAL REPLACEMENT - The replacement of one machine for another occasioned by the mechanical condition of the machine being replaced.

p. PREVENTIVE MAINTENANCE - That maintenance performed by Contractor which is designed to keep the equipment and software in proper operating condition, and which is performed on a scheduled or unscheduled basis.

q. PRICE SCHEDULE - "Price Schedule" refers to Section 5 of the Invitation and Bid, titled "Pricing," where the Bidder is required to provide pricing is under the Invitation and Bid.

r. PRINCIPAL PERIOD OF MAINTENANCE (PPM) - Unless otherwise called for in the bid specifications, the PPM shall consist of ten (10) consecutive hours between the hours of 8 a.m. and 6 p.m. (local time), Monday through Friday (exclusive of national holidays observed by Contractor).

s. PRODUCT(S) - Equipment, operating system software, application software, and other products required under the Contract.

t. PURCHASE ORDER - The purchasing document, bearing the title "Purchase Order" and the number of the Contract, as signed by an authorized representative of the Procurement Department, that authorizes the Contractor to furnish and the City to pay for equipment, software, and/or services required under the Contract.

u. REMEDIAL MAINTENANCE - The maintenance performed by Contractor which results from equipment or software failure and which is performed as required, and therefore on an unscheduled basis.

v. SUBCONTRACTOR - any subcontractor or suppler to Contractor, at any tier.

3. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

a. Any written commitment by Contractor within the scope of the Contract shall be binding upon Contractor whether or not incorporated into a Purchase Order. Failure of Contractor to fulfill any such commitment shall render Contractor liable for liquidated or other damages due under the terms of this DPA; except that if the Invitation and Bid provides different terms relating to liquidated damages, then such different terms shall govern with respect to liquidated damages only .

b. For the purposes of this DPA a commitment by Contractor includes:

(1) prices and options committed to remain in force over specified period(s) of time;

(2) any warranty or representation made by Contractor in a bid as to equipment performance or operating system software performance, application software performance, total systems performance, any other physical, design or functional characteristics of a machine, operating system software, application software, installation date or delivery date;

(3) any warranty or representation made by Contractor concerning the characteristics or items described in 3 b. (2) above made in any literature, descriptions, drawings or specifications accompanying or referred to in a bid;

(4) any modification of or affirmation or representation as to the characteristics of items described in 3b (2) above which is made by Contractor in writing during the course of discussions whether or not incorporated into a formal amendment to the bid in question; and

(5) any representation by Contractor in a bid supporting documents or other writing issued during the course of the bid or proposal review as to training to be provided, services to be performed, prices and options committed to remain in force over a fixed period of time, or any other similar matter regardless of the fact that the duration of such commitment may exceed the term of this DPA.

4. INVOICES; LEASE AND LEASE/PURCHASE TERMS

a. Invoices - Invoice requirements shall be as set forth in Section 4, *Contract Management*, of the Invitation and Bid.

b. Lease; Lease/Purchase

(1) Contractor shall render invoices (3 copies) to the City for monthly lease or lease/purchase payments in the month for which the charges accrue. No lease or lease/purchase charges shall accrue until after acceptance of the equipment and/or software pursuant to acceptance of the equipment and/or software pursuant to Paragraph 7 of this DPA. City will evidence its acceptance of equipment and/or software by written notice to Contractor. Invoices shall as a minimum provide:

(a) type and description of equipment or product;

(b) serial or other identification number;

(c) prompt payment discount, if applicable;

(d) City Purchase Order and contract numbers.

(2) Essential Use - It is the City's intent to make all lease or lease/purchase payments in connection with the equipment and/or software if funds are legally appropriated therefore, and in that regard City represents that the use of the equipment and/or software is essential to its proper, efficient and economic operation. City also represents that:

(a) it has every intent to do or cause to be done all things necessary to preserve this DPA and all related documents (if any) in full force and effect; and

(b) it has sufficient appropriations or other funds available to pay all amounts due during the current fiscal period.

(3) Authority and Authorization - City represents, covenants and warrants that:

(a) City is fully constituted political subdivision of the Commonwealth of Pennsylvania;

(b) the execution, delivery and performance by City of this DPA has been duly authorized by all necessary action on the part of the City;

(c) this DPA constitutes a legal, valid and binding DPA of City enforceable in accordance with its terms

(d) no further approval, consent or withholding of objections is required from any governmental authority with respect to this DPA;

(e) the entering into and performance of this DPA is not contrary to and does not violate any judgement, order, law, or regulation or constitute a default by City under any other DPA or instrument;

(f) with respect to this DPA, City has complied with all procurement and other legal requirements.

(4) Termination Due to Non-Appropriation

(a) In the event sufficient funds are not appropriated any future fiscal period of City for lease or lease/purchase payments due under the Contract, the City shall promptly notify contractor of such occurrence and this shall, in accordance with the provisions of Subparagraph 4.f. below, terminate as of the last day of the period for which a Purchase Order was issued by the Procurement Department, without penalty or expense to the City of any kind whatsoever.

(b) In the event of such termination, City shall peaceably surrender possession of the equipment and/or software to Contractor (or its designee) on the date of such termination, in the same condition as when delivered, subject to reasonable wear and tear. Notwithstanding the foregoing, it is City's intent that:

(1) it will not cancel this DPA under the provisions of this Subparagraph or Subparagraph 4.f. below if any funds are appropriated to the City department or agency for whom the equipment was acquired (hereinafter referred to as the "Ordering Department") for the acquisition, retention or operation of the equipment or other equipment or services performing functions similar to such equipment for the fiscal period in which such termination occurs; and

(2) that the Ordering Department will not give priority in the application of funds to any other functionally similar equipment or services.

Neither this Subparagraph nor Subparagraph 4.f. below will be construed so as to permit City to terminate the terms and conditions of this Subparagraph 4 for convenience or in order to acquire any other equipment or services for the Ordering Department to perform in essentially the same application for which the equipment is intended.

(5) Security Interest - City grants to Contractor, a purchase money security interest until City's payment of the last monthly lease or lease/purchase payment. City agrees to execute and deliver, so that Contractor may file or record, any documents reasonably requested by Contractor for the purpose of protecting and/or perfecting said security interest. In the event this DPA terminates as a result of non- appropriation of funds as specified in Subparagraph 4.f. below, the equipment and software (including title to the equipment) will pass from City to Contractor.

(6) Purchase Option - Upon written notice from the City to Contractor (which notice may, in City's sole discretion, be in the form of a Purchase Order issued to Contractor), and provided there is no Event of Default (as defined below in Subparagraph 4.b.(8) or any event which, with notice, could become an Event of Default, then existing,

City will have the right to fully satisfy its obligations under the lease or lease/purchase payment schedule with respect to any or all items of equipment and/or software by paying Contractor a concluding payment equal to the unpaid time balance calculated to delete any interest then unearned. Upon satisfaction by City of such payment obligations, Contractor will transfer any and all of its rights, title and interest in such equipment to City free and clear of any liens created by Contractor.

(7) Contractor's Right of Assignment

(a) Upon approval by the City, pursuant to Paragraph 17 of this DPA, Contractor shall have the right to assign the following rights and interests to its assignee (herein after referred to as "Approved Assignee").

(1) all of City's lease or lease/purchase payments due and to become due under the Contract;

(2) all of Contractor's right, title and interest in and to the equipment and other property described in the Contract; and

(3) all of Contractor's rights and remedies under the Contract, including the right to take all legal, equitable and other action necessary to enforce City's obligation.

(b) It is expressly understood and agreed that the Approved Assignee shall not assume, nor will it be liable for the performance of any of the obligations or liabilities of Contractor under the Contract; they all remain the responsibility of Contractor. However, it is also understood and agreed that the Approved Assignee shall not by virtue of any such agreement acquire any greater or better rights than Contractor has or would have had to payment under the Contract and that the Approved Assignee shall only be entitled to payments which are actually due or become due under the Terms and Conditions of the Contract.

(c) After approval by the City of proposed assignment, Contractor shall specify in writing the location to which the lease or lease purchase payments due and to become due under the Contract shall be forwarded; all lease or lease purchase payments shall continue to be made payable in the name of Contractor notwithstanding such approved assignment. City shall keep a complete and accurate record of all such assignments in a manner that complies with the Internal Revenue Code, Paragraph 103 (i), and the regulations promulgated hereunder.

(8) Default by City

(a) The term "Event of Default", as used herein, means the occurrence of any one or more of the following events:

(1) City fails to make any lease or lease/purchase payment as it becomes due in accordance with the terms of the Contract and/or Purchase Order, and such failure continues, after written notice thereof by Contractor, for a period longer than the City's standard payment cycle

(i.e. normally within 45-60 calendar days following receipt of proper invoices);

(2) City fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it in connection with any lease or lease/purchase arrangements entered into hereunder and such failure continues for thirty (30) days after written notice thereof by Contractor.

(b) Upon the occurrence of any Event of Default, and as long as such Event of Default is continuing, Contractor may, at its option, exercise any one or more of the following remedies:

(1) By written notice to City, request City to promptly return the equipment to Contractor, whereupon City shall immediately return the equipment at City's expense and in the manner set forth in Subparagraph 4.b.(4) hereof, or Contractor, at its option, may enter upon the premises where the equipment is located and take immediate possession and remove the same;

(2) Sell or lease the equipment or sublease it for the account of City, holding City liable for all lease or lease/purchase payments due to the effective date of such selling, leasing or subleasing and for the difference between:

(a) The purchase price, rental and other amounts paid by the purchaser, lessee or sub- lessee pursuant to such sale, lease or sub lease; and

(b) the amounts payable by City hereunder.

(9) <u>Representations Regarding Government Use:</u>

(a) If vendor is utilizing tax exempt funds to finance the lease or lease purchase City represents, covenants, and warrants as follows:

(1) It will comply with the applicable information reporting requirements of the federal Internal Revenue Code, including but not limited to, the execution and delivery to contractor of information statements required thereby;

(2) It will not do, cause to be done, or fail to do any act that will cause the Contract, or any transaction hereunder, to be an arbitrage bond within the meaning of the applicable provisions of the federal Internal Revenue Code;

(3) It will not do, cause to be done, or fail to do any act that will cause the Contract, or any transaction hereunder, to be a private activity bond within the meaning of the applicable provisions of the federal Internal Revenue Code;

(4) It will not do, cause to be done, or fail to do any act that will cause the interest portion of the lease or lease/purchase payments to be or become subject to federal income taxation under the code;

(5) It will be the only entity to own, use and operate the equipment during the lease or lease/purchase term.

(b) Vendor agrees to prepare for the City's review and certification any reports regarding the lease or lease purchase payments required under the applicable Paragraph(s) of the code.

c. Monthly Rental/License Charges

(1) Payment for monthly rental or license charges if less than one month's duration shall be prorated at 1/30th of the monthly rental or license charge for each calendar day except that the 31st day of any month shall not be included in the computation.

(2) Contractor shall render invoices (3 copies) for monthly rental for license charges in the month following the month for which the charges accrue. Monthly charges shall not accrue until after acceptance of the equipment and/or software by the City. Invoices shall as a minimum provide:

(a) type and description of equipment or product;

(b) serial or other identification number;

(c) monthly charge for each time;

(d) total charges;

(e) City Purchase Order and contract numbers.

d. Maintenance Charges

(1) Payment for maintenance services less than one month's duration shall be prorated at 1/30th of the monthly maintenance charges for each calendar day except that the 31st day of any month shall not be included in the computation.

(2) Contractor shall render invoices (3 copies) for basic monthly maintenance charges in the month for which such charges accrue. Invoices shall provide as a minimum:

(a) type and description of each piece of equipment or product;

(b) serial number or other identification number

(c) basic monthly charge for each machine and feature;

(d) total charges;

(e) prompt payment discount, if applicable;

(f) City Purchase Order and contract numbers.

(3) In case of extra service charges (i.e., per-call maintenance), contractor shall render invoices in the month following the month for which such charges accrue. Invoices shall provide as a minimum:

(a) number of hours of extra service;

(b) extra service rate applied; and

(c) total extra service charges for the month.

(4) Extra service charges shall be computed in a minimum of fifteen (15) minute ~~or less~~ increments. A copy of the applicable malfunction incident report(s) shall accompany this invoice.

f. Fiscal Funding Limitation - Payment for items and/or services to be furnished hereunder after the end of the City's current fiscal year (i.e., after June 30th) is subject to Councilmanic appropriation of funds in each succeeding fiscal year of the City. In the event that City Council fails to appropriate the necessary funds for such items and/or services in any future fiscal year of the City, the Contract shall terminate automatically without penalty, cost or liability to the City as of the last day of the fiscal period for which an appropriation was received. Payment for items and/or services after the end of the City's current fiscal year will be made pursuant to Purchase Orders issued by the City in the following fiscal year.

5. DELIVERY/INSTALLATION DATES

a. Equipment

(1) Contractor shall deliver or install newly manufactured equipment (or equipment warranted as new), ready for set up or use, within 45 days of receiving the Purchase Order; or, if different delivery or installation dates are specified in the Purchase Order and/or Invitation and Bid, on or before the delivery or installation date(s) set forth in the Purchase Order and/or Invitation and Bid. The date(s) set forth in the bid specification may be changed upon mutual agreement of the parties in writing. All equipment must be furnished as originally manufactured without change, alteration or modification to the equipment or any of the internal components thereof.

(2) If the equipment is delivered or installed prior to the specified date, the City may elect to use the equipment and change the specified date accordingly.

(3) Any changes by the City to an order or any part thereof, may require the establishment of a new mutually agreed to delivery or installation date. The City may delay the delivery or installation date by notifying Contractor at least twenty (20) calendar days before the delivery or installation date previously established.

(4) The City shall provide Contractor reasonable access to the site for the purpose of delivering or installing the equipment on or before the specified date. Contractor shall specify in writing the estimated time required to deliver or install the equipment.

(5) Equipment to be installed shall not be considered ready for acceptance testing until:

(a) Contractor notifies the City in writing that the equipment is installed and ready for use;

(b) Contractor provides the City with the documentation of successful testing performed at the City's installation site which demonstrates that the equipment operates in accordance with the manufacturer's technical specifications;

(c) after review of the documentation the City agrees that the equipment is ready to begin the acceptance test.

(6) Equipment to be delivered will be set up by the City in accordance with the instructions furnished by the manufacturer.

(a) set up of the equipment by the City and beginning of the acceptance testing shall be done within the set up allowance period provided for by the manufacturer for the type equipment involved;

(b) where equipment to be delivered is to be used in conjunction with equipment to be installed by the Contractor, the beginning of the set up allowance period for the delivered equipment or the installation date of the installed equipment, whichever is later.

b. Software

(1) Contractor shall, as required in the Invitation and Bid and/or Purchase Order, deliver or install the required operating system software and/or ordered application software ready for set up or use, on or before the delivery or installation date(s) set forth in the Invitation and Bid and/or Purchase Order. The delivery or installation date(s) set forth in the bid specifications may be changed upon mutual agreement of the parties in writing. All operating system software and application software shall perform in accordance with the software manufacturer's technical specifications and Contractor's representations.

(2) Operating system software and/or application software to be installed shall not be considered ready for acceptance testing until:

(a) Contractor notifies the City in writing that the software is installed and ready for use;

(b) Contractor provides the City with the documentation of successful testing performed at the City's installation site which demonstrates that the software operates in accordance with the software manufacturer's technical specification;

(c) After review of the documentation, the City agrees that the software is ready to begin the acceptance test.

(3) Operating system software and/or application software to be delivered shall be set up and loaded by the City in accordance with the instructions furnished by the software manufacturer. Set up and loading of the software shall be done within five working

days following delivery or within the set up allowance provided by the manufacturer, whichever is later, provided that the equipment on which it operates has been classified by the City as being ready for acceptance testing.

c. Technical Reference Manuals - Contractor shall provide on or before the required delivery or installation date for the equipment, operating system software and/or application software, one (1) complete set of all applicable reference manuals. Unless otherwise expressly prohibited by the Contractor, said manuals may be reproduced by the City for its own internal use. For purpose of Paragraph 6. of this DPA, equipment and software shall not be considered delivered or installed if the aforesaid manuals have not been furnished to the City.

6. LIQUIDATED DAMAGES FOR DELAY

a. General - The delivery and/or installation date(s) for the equipment, operating system software and/or application software provide for the utilization of the equipment and software consistent with the timing schedule of the City's programs. If the equipment and software are not delivered or installed by the specified date(s), the delay will interfere with the proper implementation of programs utilizing the equipment and software to be acquired under the Contract, to the loss and damage of the City. Due to the nature of this matter, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The parties acknowledge that in the event of any such delay the City will sustain damages, and they agree that in the event of any such delay Contractor shall pay the amounts set forth in this Paragraph as liquidated damages and not as a penalty.

b. Equipment

(1) If, on any scheduled delivery or installation date, Contractor has not delivered and/or installed (whichever is specified in the Purchase Order or elsewhere in the Contract) all ~~the~~ equipment that is scheduled for delivery or installation by such date (designated by type and model numbers, and including all features and accessories specified in the Purchase Order or elsewhere in the Contract), then Contractor shall pay to the City, as fixed and agreed liquidated damages, not as a penalty, for each calendar day's delay beginning with the scheduled delivery or installation date, one half of one per cent of the total amount of the Purchase Order(s) that apply to the equipment scheduled for delivery or installation by such date, whether or not the equipment was delivered and/or installed after such date, and whether or not other equipment required under such Purchase Orders was delivered and/or installed by the dates scheduled therefor. The City shall have the right, at its sole discretion, to deduct the amount of such liquidated damages from any invoice of Contractor under the Contract.

(2) If some, but not all, of the machines scheduled for delivery or installation are delivered or installed and the City uses any such delivered or installed machines, liquidated damages shall not accrue against the machines so used.

(3) If the delay is more than thirty (30) calendar days, then the City may, in its sole discretion, by written notice to Contractor (i) cancel the Purchase Order(s), in whole or in part, that apply to the equipment not timely installed and/or delivered, or (ii) declare Contractor in default and proceed in accordance with the provisions set forth in Paragraph 15 of this DPA. If the City terminates the right of Contractor to deliver or install and seeks to obtain substitute equipment, Contractor shall be liable for liquidated damages in the amount specified in Paragraph 6.b(1) until substitute equipment is delivered or installed, and, in addition, for all costs incurred by the City

to obtain the substitute equipment and for all other amounts due or payable to the City pursuant to Paragraph 15 of this DPA. If the City elects not to declare Contractor in default, then Contractor shall timely perform all Purchase Orders not cancelled by the City, and for Purchase Orders that are cancelled in part only, all obligations not cancelled. The remedies set forth in (i) and (ii) of this Subparagraph b.(3) shall not be exclusive, and the City's exercise of the remedy set forth in (i) shall in no way preclude the City from exercising any of its rights and remedies under Paragraph 15, *Default*, of this DPA.

(4) If the City is unable to use the equipment because Contractor failed to deliver or install (as applicable) the operating system software and/or application software ordered with the equipment on or before the delivery or installation date, and Contractor does not furnish other programming which the City accepts and agrees in writing would render the equipment usable, then, beginning with the applicable delivery or installation date, liquidated damages as specified in Paragraph 6.b.(1) shall apply in addition to the liquidated damages as specified in Paragraph 6.c. (1), until the City uses the equipment or until the Contractor provides the other programming which would render the equipment usable, whichever occurs first.

c. Software

(1) If Contractor does not deliver or install (as applicable) all operating system and/or application software ordered with the equipment as prescribed in Paragraph 5.b., on or before its scheduled delivery or installation date, Contractor shall pay to the City, as fixed and agreed liquidated damages, not as a penalty, three per cent of the monthly charge, or one half of one per cent of the one-time charge if there is no monthly charge, for each calendar day's delay in delivery or installation for each software item which is not delivered or installed as prescribed in Paragraph 5.b. In addition, the City may, at its option, delay the delivery or installation date of the equipment for which the software was ordered. The liquidated damages provided for in this Subparagraph 6.c.(1) shall not extend to chip-based firmware embedded in equipment, which shall be considered part of the equipment subject to Subparagraph 6.b for purposes of assessing liquidated damages.

(2) If the delay is more than thirty (30) calendar days, then the City may, in its sole discretion, by written notice to Contractor (i) cancel the Purchase Order(s), in whole or in part, that apply to the software item(s) not timely installed and/or delivered, or (ii) declare Contractor in default and proceed in accordance with the provisions set forth in Paragraph 15 of this DPA. If the City terminates the right of Contractor to deliver and/or install (as applicable) the operating system and/or application software and seeks to obtain substitute software, Contractor shall be liable for liquidated damages until substitute software is delivered or installed, and, in addition, for all costs incurred by the City to obtain the substitute software and for all other amounts due or payable to the City pursuant to Paragraph 15 of this DPA. If the City elects not to declare Contractor in default, then Contractor shall timely perform all Purchase Orders not cancelled by the City, and for Purchase Orders that are cancelled in part only, all obligations not cancelled. The remedies set forth in (i) and (ii) of this Subparagraph c.(2) shall not be exclusive, and the City's exercise of the remedy set forth in (i) shall in no way preclude the City from exercising any of its rights and remedies under Paragraph 15, *Default*, of this DPA.

(3) In the event the provisions of Paragraph 6.b.(2) are applicable and substitute equipment is delivered or installed, Contractor shall be liable for liquidated damages in the amount specified in Paragraph 6.c.(1) for the period of time between the original software delivery or installation date and the date the software for the substitute equipment is delivered or installed (as applicable).

d. Limitation - Unless otherwise provided elsewhere in the Contract, in no event shall the total of the combined liquidated damages for equipment and software for which Contractor may be liable under this Paragraph 6 exceed fifty-five (55) per cent of the total dollar amount of all Purchase Orders that apply to the software and/or equipment not timely delivered and/or installed.

e. Exception - Contractor shall not be liable for liquidated damages for delays due to causes which would relieve Contractor from liability for costs incurred by the City to procure substitute services, equipment, software, or other products, as provided in Paragraph 15.d, *Force Majeur Exceptions to Contractor Default*, of this DPA.

f. The City's right to, and receipt of, liquidated damages for delays as provided in this Paragraph is in addition to and not in limitation of any rights and remedies the City may have under the Contract, including but not limited to Paragraph 15 of this DPA.

7. STANDARD OF PERFORMANCE AND ACCEPTANCE

a. This Paragraph establishes a standard of performance which must be met before any equipment or software (operating system and/or application) is accepted by the City. This also includes field modification of a machine from one model to another and machines which are added or field modified after a system has completed a successful performance period. It shall not include field modifications not involving a model change, machines which are relocated by the City, or machines not maintained by Contractor.

b For equipment delivered by Contractor and for equipment and/or <u>required operating system software to be installed by Contractor:</u>

(1) The performance period shall begin on the date the equipment and/or software is installed, ready for use and shall end when the equipment and/or software furnished hereunder has met the standard of performance for a period of thirty (30) consecutive calendar days by operating in conformance with the manufacturer's technical specifications and Contractor's representations. It is understood that equipment shall not be deemed to have satisfied the standard of performance unless during the said thirty (30) consecutive calendar day period the equipment operates as described in this Subparagraph at an average effectiveness level of 90% or more.

(2) In the event the equipment and/or software (operating system) does not meet the standard of performance during the initial thirty (30) consecutive calendar days, the standard of performance test shall continue on a day-by-day basis until the standard of performance is met for a total of thirty (30) consecutive calendar days.

(3) If the equipment and/or operating system software fails to meet the standard of performance after one hundred twenty (120) days from the commencement of the performance period, the City may, in its sole discretion, terminate the applicable Purchase Order and/or proceed in accordance with the provisions of Paragraph 15, *Default*. In the event of such termination, Contractor shall, upon written notice by the

City, remove, by the date specified in the City's notice and at Contractor's sole expense, all equipment and/or software furnished under the terminated Purchase Order(s).

(4) The average effectiveness level for a system is the percentage figure determined by dividing the number of operational use time hours of the processor during the performance period by the number of such hours plus equipment failure downtime.

(5) After the equipment and/or software has completed a successful performance period, a machine which is field modified from one model to another, or is ordered for that system, shall be subject to a performance period which shall be determined in accordance with the provisions of Paragraph 7, but independently of processor or other machine downtime in the system. Should the actual hours be less than 100 and the average effectiveness level for such hours be 90 percent or more, the City shall accept the machine without additional simulated machine operational use time necessary to achieve a minimum of 100 hours of use time on that machine.

(6) Operational use time for performance testing for a system is defined as the accumulated time during which the processor is in actual operation, including any interval of time between the start and stop of the processor.

(7) Operational use time for performance testing of a field modified machine involving a model change or a machine added to a system, which has been accepted by the City, is defined as the accumulated time during which the machine is in actual use.

(8) During the performance period, equipment failures will be corrected by Contractor at no cost to the City.

(9) During a period when one or more machines are inoperable and the system is undergoing a performance test, the City may run jobs when such action does not interfere with maintenance of the inoperable equipment. The operational use time which accrues on the processor during this period shall be excluded from the system's effectiveness level computation. The downtime which accrues during this period shall be excluded from the downtime portion of the system effectiveness level computation.

(10) Machine failure downtime including downtime for added, field modified, substitute or replacement machines after a system has completed a successful performance period, is that period of time when such machines are inoperable due to their failure.

(11) Downtime for each incident shall start from the time the City makes a bona fide attempt to contact the Contractor's designated representative at the pre-arranged contact point and ends when the system or machine(s) is returned to the City in proper operating condition, exclusive of actual travel time required by contractors maintenance personnel but not in excess of one hour on the day such service were requested.

(12) During the performance period for a equipment and/or software, a minimum of 100 hours of operational use time with reproductive or simulated work will be required as a basis for computation of the average effectiveness level, exclusive of the periods covered by Paragraph 7.b.(9). However, in computing the average effectiveness level, the actual number of operational use hours shall be used when in excess of the minimum of 100 hours. In scheduling use during the performance period, the City

shall schedule enough hours to achieve the minimum 100 hours required and shall make provisions for preventive maintenance required for the system.

(13) The City shall maintain appropriate daily records to satisfy the requirements of this Paragraph 7.

(14) Equipment and/or software shall not be accepted by the City and no charges shall be paid by the City until the standard of performance is met except that, should the City delay the start of the performance period in accordance with the maximum 30-day delay provision in Paragraph 7.b.(16), amounts equal to Contractor's standard maintenance charges for the period between the installation date and the beginning of the performance period shall accrue and shall be paid promptly upon completion of a successful performance period. The date of acceptance shall be the first day of the successful performance period.

(15) Operational use time and downtime shall be measured in hours and whole minutes.

(16) Should it be necessary, the City may upon prior notice to Contractor to be confirmed in writing, delay the start of the performance period, but such delay shall not exceed thirty (30) consecutive calendar days, subject to the provisions in Paragraph 7.b.(14). The performance period must begin no later than the 31st day, unless otherwise agreed in writing between the City and the Contractor.

(17) When a system involves on-line machines which are remote to the basic installation, the required effectiveness level shall apply separately to the system and to each remote machine, unless the City and Contractor agree otherwise. When system configurations ordered by the City are so designed as to have characteristics which would prevent a successful attainment of the standard of performance, the Contractor will advise the City in writing within 15 days from Contractor's receipt of the order (unless a different period is specified in the Purchase Order or elsewhere in the Invitation and Bid) of any equipment or software which Contractor believes will not meet the standard of performance and therefore will not be considered for purposes of the standard of performance, warranty, or maintenance.

c. <u>For required operating system software to be delivered but not installed by Contractor:</u>

(1) Operating system software shall be accepted by the City provided that the installed software (i) successfully runs the manufacturer's diagnostic routines; (ii) operates in accordance with all applicable manufacturers specifications and all specifications and requirements set forth in the Invitation and Bid; (iii) fully conforms to all such requirements and specifications when operated together with the other software, and on the equipment, if any, furnished by the Contractor under the Contract; and (iv) if so required under the Purchase Order and/or Invitation and Bid, fully conforms to all such requirements and specifications when operated together with other software, and on equipment, that was not furnished by Contractor under this Contract.

(2) If any of the City's acceptance tests shall disclose deficiencies, the City shall notify Contractor in writing of the deficiencies, the City shall notify Contractor in writing of the deficiencies and Contractor (or such longer period as the City may authorize in writing) repair or replace the defective equipment and/or software and the City shall promptly thereafter reconduct the acceptance tests.

(3) Failure to meet the acceptance criteria specified above upon the second test shall, at the City's option, be deemed a default by Contractor and the City shall have all the rights afforded to it as are applicable on default hereunder.

d. For unmodified applications software to be installed or delivered by Contractor:

(1) Unmodified applications software shall be accepted by the City promptly after installation or delivery to the City site provided that the application software successfully runs the manufacturers diagnostic routines furnished hereunder by the Contractor.

(2) If any of the foregoing tests shall disclose deficiencies, the City shall notify Contractor in writing of the deficiencies and Contractor shall, within ten (10) calendar days after receipt of such notification (or such longer period as the City may authorize in writing), replace the defective application software, and the City shall promptly thereafter reconduct the acceptance tests.

(3) Failure to meet the acceptance criteria specified above upon the second test shall, at the City's option, be deemed a default by Contractor and the City shall have all the rights afforded to it as are applicable on default hereunder.

e. For modified applications software to be installed or delivered by Contractor.

(1) The successful Contractor and the City will develop a plan for acceptance testing of modified applications software.

(2) For each installation of modified applications software, or phase thereof, the Contractor and the City will, unless agreed otherwise in writing, proceed as follows:

(a) They will establish and document in writing the definition of elements of the application or phase thereof, as described in the Purchase Order or elsewhere in the Contract.

(b) They will establish a mechanism for review of the on-going development of the modified applications software, or phase thereof, to include review and feedback sessions between City and Contractor's personnel.

(c) They will conduct an initial testing of the modified applications software supervised by City personnel:

(1) Testing should take place at a Philadelphia area location with the hardware/software available locally or through dial up/leased lines.

(2) Representative test data shall be developed by the City approximating 2% of the total annual work volume for that phase of work.

(3) Entry of the test data shall be done by City personnel (or by Contractor personnel as an option selected by City) and results reviewed jointly by City and Contractor to determine further requirements.

(d) Upon completion of the programming changes as required by the initial testing, they will conduct a secondary test of the modified application software supervised by City personnel:

(1) Testing should take place at a Philadelphia area location with the hardware/software available locally or through dial up/leased lines.

(2) Representative test data shall be developed by the City approximating 7% of the total annual work volume for that phase of work.

(3) Entry of the test data shall be done by City personnel (or by Contractor personnel as an Option selected by City) and results reviewed jointly by City and Contractor to determine further requirements.

(3) Acceptable completion of secondary testing for the modified applications software or each phase thereof, shall be required prior to final acceptance testing.

f. Final acceptance testing:

(1) Upon completion of the programming changes as required by the secondary testing, the Contractor shall undertake all measures necessary to initiate acceptance testing as outlined in Subparagraph 5.b.(2).

(2) The performance period shall begin on the date the modified applications software, or phase thereof, is installed or delivered ready for use and shall end when the applications software furnished has met the standard of performance for a period of thirty (30) consecutive calendar days by operating in conformance with the City requirements and Contractors representations.

(3) In the event the modified applications software does not meet the standard of performance during the initial thirty (30) consecutive calendar days, the standard of performance test shall continue on a day-by-day basis until the standard of performance is met for a total of thirty (30) consecutive calendar days.

(4) If the modified applications software fails to meet the standard of performance after ninety (90) days from the commencement of the performance period, the applications software or phase thereof shall be remanded to the Secondary testing level, and Contractor may be subject to the provisions of Subparagraph 6.c.

(5) Upon being remanded to the secondary testing level, the City shall notify Contractor in writing of the deficiencies and Contractor shall make the additional modifications necessary to meet City requirements prior to initiating a second final acceptance test.

(6) The City shall maintain appropriate daily records to satisfy the requirements of this Subparagraph and shall provide the Contractor opportunity during the performance period to conduct further modifications as may be necessary to meet City requirements. The City shall notify the Contractor in writing of the date of the first day of the successful performance period.

(7) Modified applications software shall not be accepted by the City and no charges shall be paid by the City until the standard of performance is met. The date of acceptance shall be the first day of the successful performance period.

(8) Should it be necessary, the City may delay the start of the performance period, but such delay shall not exceed thirty (30) consecutive calendar days.

(9) The majority of testing should take place at a site within a 25-mile radius of Philadelphia. If the Contractor proposes any testing outside this radius, the Contractor will be required to bear the costs of all travel and lodging (including meals) expenses for the City employees in such off-site testing.

(10) Failure to meet the acceptance criteria specified upon the second test shall, at the City's option, be deemed a default by the Contractor and the City shall have all the rights afforded to it as applicable on default hereunder.

g. When an integrated system is ordered incorporating equipment, operating system software, and applications software, the system shall not be deemed accepted until all items meet acceptance criteria.

8. WARRANTY

a. The warranty period for all equipment, operating system software and application software furnished hereunder shall be ninety (90) days commencing upon acceptance of the equipment and software by the City; provided, however (i) if the manufacturer's standard warranty is longer than ninety (90) days for any item of equipment or software furnished under the Contract, then such longer warranty period shall apply; and (ii) if a warranty period is specified in the Purchase Order or in the Invitation and Bid, then such warranty period shall apply whether or not it is longer than ninety (90) days and whether or not it is longer than the manufacturer's standard warranty; and (iii) if the warranty period expires on a Friday or Saturday, it will be extended by either two days or one day respectively, so that the last day of such warranty period will be on a Sunday. Subject to the limitations of Paragraph 8.c. below, during the warranty Contractor shall, without cost or expense to the City, repair or replace equipment, operating system software, and/or application software as may be required to maintain the same in good working order and in conformance with the manufacturer's technical specifications, Contractor's representations, all specifications and requirements set forth in the Invitation and Bid, and any performance criteria that are agreed by the parties in writing as part of tests performed pursuant to Paragraph 7, Standard of Performance and Acceptance. During the warranty period, Contractor will be required to perform all of the maintenance obligations set forth below in Paragraph 12. of this DPA (i.e. according to the type of maintenance service called for in the bid specifications), without cost or expense to the City. If, after seven (7) days (or such longer period as may be agreed to by the City in writing), Contractor is unable to get the equipment and/or software (operating system and/or application), or replacement equipment and/or software, to perform as warranted, the City may, at its sole option (i) require Contractor to pay the City as liquidated damages, not as a penalty, the amount of One Hundred Dollars ($100) per day for each day that the equipment and/or software fails to perform as warranted (Contractor expressly acknowledges and agrees that Subparagraph 6.a, relating to *Liquidated Damages for Delay*, applies fully to any failure of Contractor to timely cause the equipment and/or software to perform as warranted); or (ii) declare Contractor in default under Paragraph 15 of this DPA and exercise any or all rights and remedies afforded to it for Contractor default under the Contract; provided, that the remedies set forth in (i) and (ii) shall not be exclusive, and the City's exercise of the remedy

set forth in (i) shall in no way preclude the City from exercising any of its rights and remedies under Paragraph 15 of this DPA.

b. Prior to the expiration of the warranty period, whenever equipment is shipped for mechanical replacement purposes, Contractor shall bear all costs, including, but not limited to, costs of packing, transportation, rigging, drayage and insurance. This warranty shall apply to the replacement machine beginning on the first day of its acceptance. Warranty service may be provided by repairing the machine or by exchanging it under the type of maintenance service selected by the City.

c. The warranties provided herein do not cover maintenance required to repair damages malfunctions or service failures caused by:

(1) City's failure to follow Contractor's furnished operation or maintenance instructions or the Contractor supplied manual;

(2) Non-Contractor's repair, modification or movement of the equipment or software;

(3) Accessories, alterations, or attachment of products neither manufactured nor supplied by Contractor; or

(4) Events beyond the control and without the fault or negligence of Contractor;

(5) Equipment or software which the vendor has informed the City will not meet the standard of performance;

(6) Those items excluded from maintenance coverage as described in Paragraph 12.a.(15) below.

d. Except as provided in this Paragraph and Paragraph 3 of this DPA, and except for the implied warranty of merchantability, there are no other warranties expressed or implied.

9. SITE PREPARATION

a. Site preparation specifications shall be furnished in writing by Contractor within 72 hours of City's request. The specifications shall be in such detail so that the equipment to be delivered or installed shall operate efficiently from the point of view of environment.

b. The City agrees to have the installation site prepared at its own expense in accordance with Contractor's written site specifications prior to the delivery or installation date.

c. Any alterations or modifications in site preparations which are directly attributable to incomplete or erroneous environmental specifications provided by Contractor and which would involve additional expenses to the City, shall be made at the expense of Contractor.

d. Any such site alterations or modifications which cause a delay in the delivery or installation date will also result in liquidated damages for equipment as are specified in Paragraph 6. of this DPA, if the delay was directly attributable to incomplete or erroneous environmental specifications provided by Contractor.

e. For equipment to be installed, physical planning assistance requested by the City for initial installation of the equipment shall be provided at no additional charge.

10. TRANSPORTATION AND INSTALLATION - For equipment and/or software to be delivered or installed all charges for transportation to the City's installation site, including any rigging or drayage costs at the City's site, shall be as set forth in the Invitation and Bid and/or Purchase Order. Contractor shall make all arrangements for transportation and shall notify the City upon shipment. For equipment and software (operating system and/or application) specified in the bid specifications and price schedule for installation, Contractor shall, for the installation charges bid, provide all necessary labor and materials (including cabling) for unpacking, placement and installation of equipment and software at the City site. Packing materials shall be removed by Contractor at the Contractor's sole cost and expense, unless agreed otherwise by the City in writing.

11. RISK OF LOSS OR DAMAGE

a. Equipment - risk of loss or damage to the equipment, other than loss or damage caused by Contractor's fault or negligence, shall be deemed to pass to the City upon acceptance of the equipment by the City pursuant to Paragraph 7 of this DPA. City shall self-insure against the aforesaid risk of loss or damage and will furnish Contractor a letter to such effect upon request.

b. Software - If software (operating system and/or application) materials are lost or damaged during shipment from Contractor, Contractor shall replace such software and program storage media at no additional charge to the City. If software materials are lost or damaged while in the possession of the City, Contractor shall replace such software materials at its then current commercial charges, if any, for processing, distribution, and/or program storage media.

12. MAINTENANCE RESPONSIBILITIES

Except as expressly provided otherwise in the Invitation and Bid, the following terms and conditions shall apply to maintenance services furnished by Contractor under the Contract:

a. General Provisions

(1) Subject to the limitations set forth in 12.a.(15) below, Contractor shall provide maintenance service (labor and parts) at the prices set forth in the Invitation and Bid, Price Schedule, and/or Purchase Order for the period specified in Subparagraph 12.a.(2). Contractor shall keep the equipment and software (operating system and application) furnished hereunder in good operating condition and, subject to security regulations, the City shall provide Contractor access to the equipment and software (operating system and/or application) to perform maintenance service. "Good operating condition" for equipment shall mean, the continued ability to satisfy the manufacturer's technical specifications and Contractor's representations in Subparagraph 12.a. (10)(a); for software it shall mean the continued ability to operate in accordance with the manufacturer's technical specifications and Contractor's representations. The maintenance prices of Contractor include and substitute equipment as well as the detection and correction of software errors and all changes, updates and enhancements furnished by Contractor and/or equipment/software manufacturer without additional charge to its (their) other maintenance customers. In those instances involving on-site type maintenance (see description below) where it is necessary for Contractor to replace the equipment and/or software (operating system and/or application software) Contractor shall be responsible for the equipment and software and shall bear all costs related thereto, including, but not limited to, costs of packing, transportation, rigging, drayage and insurance. Maintenance service for any

or all equipment and software may be discontinued by the City upon thirty (30) day's prior written notice to Contractor.

(2) Maintenance Continuity - Contractor shall provide the required maintenance service at the prices agreed to by the City in writing (which agreement may, in the City's sole discretion, be in the form of a Purchase Order issued by the Procurement Department) for a period of twelve (12) month following expiration of the applicable warranty period. Thereafter, maintenance service may be renewed under the terms and conditions of the Contract at the sole option of the City on an annual basis (hereinafter referred to as "future maintenance renewal periods") for up to five (5) additional one (1) year periods and for each year thereafter that the equipment is marketed and/or maintained by the manufacturer. Contractor may increase maintenance prices for future maintenance renewal periods provided that:

(a) increase shall not be effective in any City fiscal year unless the City received written notice of increase at least sixty (60) days prior to the start of each twelve (12) month maintenance renewal period; and

(b) in no event shall the increased maintenance prices exceed Contractor's published charges maintenance service for non-educational state and local governments on the effective date of the adjustment, under similar terms and conditions.

(3) Maintenance Facilities - The City shall provide adequate working space including heat, light, ventilation, electric current and outlets for the use of Contractor's maintenance personnel. These facilities shall be within a reasonable distance of the equipment to be serviced and shall be provided at no charge to Contractor.

(4) Maintenance Periods

(a) The basic monthly maintenance charge of Contractor shall entitle the City to maintenance service during a principal period of maintenance (as defined in Paragraph 2 of this DPA).

(b) The City, by giving seven (7) calendar days written notice to Contractor, may change the principal period of maintenance in accordance with Contractor's standard time increments and surcharge rates.

(c) Except as otherwise provided in the Contract, on-site type maintenance service (see description below) which is authorized by the City outside the designated principal period of maintenance or extension thereof shall be performed on a per-call basis at Contractor's per-call hourly rates as agreed to in writing by the City (which agreement may take the form of a Purchase Order issued by the Procurement Department). No charges for parts, travel time, travel expenses or any other item, other than Contractor's per-call hourly rate, shall apply to per-call maintenance. Contractor shall be paid only for the actual time spent on-site performing required maintenance services unless mutually agreed upon, only one technician of Contractor shall be furnished during periods outside the principal period of maintenance or extension thereof. For remedial maintenance which either began, or for which a request was placed and a response made during the principal period of maintenance or extension thereof, a grace period of up to one additional hour beyond the

selected principal period of maintenance or extension thereof will be provided at no additional charge.

(5) Preventive Maintenance - Preventive maintenance shall be performed by Contractor in accordance with the manufacturer's then current commercial practices at a time which is mutually acceptable to the City and Contractor, and which is consistent with the City's operating requirements. Contractor shall specify in writing the frequency and duration of the preventive maintenance required for the equipment and software furnished under the Contract.

(6) Remedial Maintenance

(a) Remedial maintenance shall be performed as required when equipment or software is inoperative. Contractor shall provide the City with a designated point of contact and shall make representative to receive requests for service.

(b) Where on-site type maintenance of hardware or software has been contracted for, Contractor's maintenance personnel shall arrive at the City's installation site, fully prepared and ready to commence required repairs, within four (4) hours after service is requested. The four (4) hour response time shall apply regardless of the hour or day of the week the call was placed or the principal period of maintenance (including any extension thereof) selected.

If Contractor fails to satisfy the requirements of this Subparagraph 12.a.(6)(b), the City may, at its sole option, require Contractor to pay the City as liquidated damages, not as a penalty, the amount of Fifty Dollars ($50) per hour for each hour, beginning with the fifth hour after service is requested, during which repairs are not performed. (Contractor expressly acknowledges and agrees that Subparagraph 6.a, relating to *Liquidated Damages for Delay*, applies fully to any failure of Contractor to arrive at the City's installation site and commence repairs within the required four (4) hour response time). Such liquidated damages remedy shall be in addition to, and not in lieu of, any other rights and remedies that the City may have against Contractor under the Contract, including, without limitation, those set forth in Paragraph 15, *Default*.

(c) Response time shall be measured from the time the City makes a bona fide attempt to contact Contractor's representative at the pre-arranged contact point and ends when Contractor's maintenance representative arrives on site ready to perform required service.

(d) All equipment and software shall be restored to good operating condition and caused to operate in conformance with the manufacturer's technical specifications, Contractor's representations, all specifications and requirements set forth in the Invitation and Bid, and any performance criteria that are agreed by the parties in writing as part of tests performed pursuant to Paragraph 7, *Standard of Performance and Acceptance*, within two (2) business days following the calendar day on which the City requests service.

If Contractor fails to satisfy the requirements of this Subparagraph 12.a.(6)(d), the City may, at its sole option, require Contractor to pay the City as liquidated damages, not as a penalty, the amount of Fifty Dollars ($50) per

day for each day, beginning with the third business day after service is requested, during which the equipment is not restored and caused to operate as set forth above in this Subparagraph (d). (Contractor expressly acknowledges and agrees that Subparagraph 6.a, relating to *Liquidated Damages for Delay*, applies fully to any failure of Contractor to so restore the equipment and so cause it to operate within the required two (2) business days restoration time.) Such liquidated damages remedy shall be in addition to, and not in lieu of, any other rights and remedies that the City may have against Contractor under the Contract, including, without limitation, those set forth in Paragraph 15, *Default*.

(e) Repeated failure to satisfy the four (4) hour response time requirement provided in Subparagraph 6(b) and/or the two (2) business day restore time requirement provided in Subparagraph 6(d) shall constitute sufficient grounds for placing Contractor in default in accordance with the provisions of Paragraph 15 of this DPA. For equipment and/or software (operating and/or applications) that require on-site maintenance Contractor's maintenance personnel shall supply continuous effort, unless otherwise directed by the City, to restore the equipment and software to good operating condition.

(7) Malfunction Report - Contractor shall furnish a malfunction incident report to the City upon completion of each maintenance call. The report shall include, as a minimum, the following: date and time notified; date and time of arrival; type and model number(s) of product; time spent for repair; time City held machine(s); and/or software preventive maintenance by Contractor's maintenance representative; description of malfunction; list of parts replaced; additional charges, if applicable.

(8) Service Records - In addition to malfunction incident reports, contractor shall maintain a complete record of all service performed on each machine, including all field and engineering changes performed on site. This service record shall be kept at the City installation site or such other sites as may be approved by the City in writing and shall be furnished for review if requested by the City. The service record shall be an individual record identifying each machine explicitly, with a complete history of dated service and all field and engineering changes recorded therein.

(9) Replacement Parts - Subject to the limitations in Paragraph 12.a.(15) below, while equipment is under warranty or maintenance with Contractor, there shall be no additional charges for replacement parts. Unless otherwise agreed to by the City, only new standard parts (or puts warranted as functionally equal to new) sourced from the original equipment manufacturer shall be used in effecting repairs. Maintenance parts shall be furnished on an exchange basis and the replaced parts become the property of Contractor. Contractor shall maintain an adequate supply of spare parts necessary for the repair or replacement of equipment within a twenty-five (25) mile radius of the City of Philadelphia.

(10) Maintenance Credits

(a) Contractor shall grant a credit for any machine which fails to perform at an effectiveness level of 90% during any month. The effectiveness level for a machine is computed by dividing the operational use time by the sum of this time plus equipment failure downtime. Operational use time is the time the machine is in actual operation and is not synonymous with power-on time.

Downtime shall be measured from the time that Contractor is notified of equipment failure to the time the machine is restored to good working order exclusive of actual travel time required by Contractor's service representative up to one (1)hour per incident. Unless Contractor is authorized by the City to perform maintenance service outside the designated principal period of maintenance or extension thereof in accordance with Subparagraph 12.a.(4)(c), downtime shall accrue only during the principal period of maintenance (including any extension thereof) and shall in no event accrue during any time that Contractor is denied full, free and safe access to the machine(s) to provide maintenance service. The credit shall be a reduction of the total monthly maintenance charges for each affected machine by the percentage figure determined by subtracting the actual effectiveness level percentage from 100%. For example, if the effectiveness level of a machine is 82%, the credit for that machine would be 18%. It shall be the responsibility of the City to administer the provisions of this Subparagraph.

(b) The City's right to, and receipt of, maintenance credits as provided in this Paragraph is in addition to and not in limitation of any other rights and remedies the City may have under the Contract, including but not limited to Paragraph 15 of this DPA.

(11) Notwithstanding Contractor's remedial or maintenance efforts, Contractor may be declared in default if equipment or software continues to exhibit defects causing disruption of use and/or repeated periods downtime.

(12) Additional Maintenance Charges - There shall be no additional maintenance charges for:

(a) Preventive maintenance which is performed during the principal period of maintenance or extension thereof. (Preventive maintenance performed outside of the selected principal period of maintenance or extension thereof at the City's request shall be furnished at the applicable per-call rates).

(b) Remedial maintenance required within a 48-hour period do to a recurrence of the same malfunction.

(c) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has commenced.

(d) Remedial maintenance required when the scheduled preventive maintenance preceding the malfunction had not been performed.

(13) Engineering and Field Changes - Contractor shall inform the City, in writing, of any engineering or field changes deemed advisable by Contractor and/or the manufacturer of the equipment. Contractor shall indicate when any change is considered mandatory, in which case it shall be installed. If the change is not mandatory, Contractor shall indicate the purpose or desirability of the change for the City. Unless the City responds in writing within fifteen (15) days, it shall be assumed that the City agrees to installation of the non-mandatory change. When informing the City of any engineering or field change, Contractor shall also indicate the number of hours of machine time and the number of hours of system time required to install the change,

including any testing deemed necessary to ensure the return of the machine and system to good operating condition. All engineering and field changes shall be performed at no additional cost or expense to the City at mutually agreed to times.

(14) Through the issuance of a change to the City Purchase Order, the City may upon 30 days notification alter the type of maintenance program for any machine or software program consistent with the Contractor's standard maintenance program.

(15) Services Not Covered - In addition to the limitations in Paragraph 8.c hereof, Contractor's maintenance responsibilities shall not include electrical work external to the equipment, changes or alterations to the physical environment of the installation site, furnishing accessories or supplies, painting or refinishing the equipment or furnishing materials, inspection of machine's, moving or reinstallation of equipment except when required by an equipment upgrade or repair, maintenance of accessories, machines or other devices not furnished by Contractor, or repairs made necessary by misuse or negligence of the City, its employees, agents, contractors or invitees.

(16) All features and model upgrades that are eligible for maintenance service under the Contract, installed on a machine under the Contract, and not covered under Contractor warranty or another manufacturer's warranty be under the maintenance terms of the Contract with the same Type of Service and, if applicable, the same Optional Periods of Maintenance Service as the machine on which they are installed.

b. Types of Equipment Maintenance

(1) General

(a) Maintenance service for equipment under the Contract may be obtained utilizing one or more of the types of service specified in 12.b.(2) below as requested by the City in the bid specifications.

(b) Except as expressly noted herein and/or in Paragraph 12.a above, all the provisions of Paragraph 12.a. shall apply to the different types of equipment maintenance service. The requirements of the Subparagraph under 12.a pertaining to maintenance facilities, malfunction reports, service records, additional maintenance charges, and maintenance credits shall not apply to hardware maintained off site or on an exchange basis.

(2) Types of Service

(a) Contractor On-Site Repairs - The Contractor will provide maintenance service for the failing machine at the City's location.

(b) Contractor On-Site Exchange - The Contractor will deliver the exchange machine to the City's: location, disconnect the failing machine, connect the exchange machine, and remove the failing machine from the City's location.

(c) City On-Site Exchange - The Contractor will have an exchange machine delivered to the City's location. The City will disconnect the failing machine and prepare it for shipment to the Contractor, connect the exchange machine, and verify its operation. The City will follow the Contractor's instructions

regarding the shipment of the failing machine to the Contractor. Such shipment will be at the Contractor's expense.

(d) City Carry-In Exchange - The City will deliver the failing machine to a Contractor Service/Exchange Center or other Contractor designated location, pickup the exchange machine and take it to the City's location, connect it, and verify its operation. In lieu of such delivery and pickup, the City may ship the failing machine, prepaid, in the original shipping container or equivalent, to a Contractor Service\Exchange Center designated to receive such a shipment. Following receipt of the failing machine, the Contractor will ship the exchange machine to the City's location, prepaid, within the United States.

(e) City Carry-In Repair - The City will deliver the failing machine to a Contractor Service/Exchange Center or other Contractor designated location, following any necessary repairs, pick up the machine or machine element and take it to the City's location, connect it, and verify its operation. In lieu of such delivery and pickup, the City may ship the failing machine, prepaid, in the original container or equivalent, to a Contractor Service/Exchange Center designated to receive such a shipment. Following any necessary repairs, the Contractor will ship the machine or machine element to the City's location, prepaid, within the United States.

(3) For City "Carry-In" maintenance services, the City agrees that the City is responsible for risk of loss of, or damage to, machines during the period such machines are in transit to the Contractor, except for loss or damage caused by the Contractor's fault or negligence. However, the Contractor is responsible for risk of loss of, or damage to, machines owned by the Contractor and/or machines owned by other than the Contractor while in possession of the Contractor or in transit from the Contractor by a Contractor- selected carrier whose charges were prepaid by the Contractor.

c. Types of Software Maintenance

(1) General

(a) Contractor shall provide maintenance of software being acquired pursuant to the bid to include preventive maintenance, remedial maintenance as may be required, and program changes, updates, and enhancements which may be furnished by Contractor and/or (software) manufacturer without additional charges to its (their) other maintenance customers.

(b) Maintenance services for software under the Contract may be obtained utilizing one or more of the types of services specified in 12.c.(2) below as requested by the City in the bid specifications.

(c) Except as noted herein and/or in Paragraph 12.a., all provisions of Paragraph 12.a. except replacement parts, maintenance credits and engineering and field changes shall apply to the different types of software maintenance. In addition the requirements of the Subparagraphs under Paragraph 12.a pertaining to maintenance facilities, malfunction reports, service records, and additional maintenance charges shall not apply to software maintained on a central service basis.

(2) Types of Service

(a) Central service - (off-site) Contractor shall designate a service location(s) which will accept documentation in the format prescribed by the Contractor indicating that a problem is caused by a defect in the licensed software program. Contractor shall correct the defect by issuing correction information or documentation to the City. City will be responsible for the preparation and submission of documentation to Central Service.

(b) Local Service - (on-site) Contractor shall, within the required response time, provide an on-site representative to analyze the software defect. Upon verification of the defect, Contractor's representative may issue correction information to City, submit documentation to Central Services, or make a reasonable attempt to resolve the problem by applying a local fix or a bypass.

(c) Local Assistance - (on-site) Contractor shall, within the required response time, provide an on-site representative to analyze the software defect. Upon verification of the defect, Contractor's representative may issue correction information to the City, assist the City in preparing documentation for submission to Central Services, or make a reasonable attempt to resolve the problem by applying a local fix or a bypass.

13. LIABILITY AND INDEMNIFICATION - Contractor shall indemnify defend, and hold harmless the City, its officers, employees and designated representative, from any and all claims, suits, actions, damages, liabilities, expenses and costs of any kind, including litigation costs and reasonable attorney's fees, arising out of bodily injury (including death), personal injury and/or damage to real or tangible personal property, provided that the injury or damage was caused by the fault or negligence of Contractor, its officers, employees, agents or subcontractors (including suppliers).

14. PATENT, COPYRIGHT AND OTHER PROPRIETARY RIGHTS INDEMNITY

a. In the event of any claim, suit or action against the City which alleges that the equipment, software or services furnished hereunder infringe upon or violate any United States patent, copyright, trade secret or any other proprietary right of any third party the City shall promptly notify Contractor in writing and Contractor shall defend such claim, suit or action in the City's name, but at Contractor's expense, and Contractor shall indemnify the City against all resulting costs, damages and attorney's fees finally awarded. City shall provide full information and all reasonable cooperation necessary to Contractor's defense of any such claim, suit or action.

b. If, in Contractor's opinion, the equipment or software furnished hereunder is likely to or does become the subject or claim of infringement, then without diminishing Contractor's obligation to indemnify and defend the City as stated above, Contractor may, at its option, substitute for the alleged infringing equipment or software, modifications sufficient to render them non-infringing which are satisfactory to the City or at Contractors' option and expense obtain the right for the City to continue the use of such equipment or software. If neither of the foregoing alternatives is available despite reasonable efforts of Contractor, then Contractor agrees to take back the infringing equipment and/or software and refund for equipment a credit for the purchase price less a reasonable allowance for depreciation with a pro-ration period of 6 years, for software whose total charges are fully paid, a reasonable credit reflecting City's use of the software.

c. It is understood and agreed that the provisions of this Paragraph shall not apply if the claimed infringement results from non-Contractor modification of the equipment or software, or the combination, operation, or use of equipment or software furnished hereunder with other equipment, software, apparatus or devices not furnished or approved by Contractor, or in other than the Contractor's specified operating environment. This Paragraph states the entire liability of Contractor with respect to infringement or violation of patents, copyrights, trade secrets or other third party proprietary rights.

15. DEFAULT - All work performed and goods and services rendered by Contractor under the Contract shall conform to the terms and conditions of the Contract, including, but not limited to, the specifications and requirements contained in the Invitation and Bid and the provisions of this DPA.

a. Events of Default - The following shall constitute events of default under the Contract:

(1) failure by Contractor to comply with any provision or Paragraph of the Contract, including, but not limited to, the specifications and requirements for the products and/or services required, and this DPA;

(2) failure by Contractor to comply with any federal state and local law, statute, ordinance or applicable regulation of any federal, state, or local governmental department, board, agency and commission;

(3) falseness of any representation or warranty made in the Contract or other document(s) submitted to the City by Contractor in connection with the Invitation and Bid and Contract;

(4) failure by contractor to pay its suppliers or subcontractors, misappropriation of any funds provided under the contract, or failure to notify the City upon discovery of any misappropriation;

(5) a violation of law by Contractor which results in its making a guilty plea, a plea of nolo contendre, or conviction of a criminal offense by contractor, its directors, employees, or agents or indictment or issuance of charges against Contractor, its directors, employees or agents for any criminal offense or other violation of law (whether or not the offense or violation of law is ultimately adjudged to have occurred), where such criminal offense, violation, indictment or charges, in the sole judgment of the Procurement Commissioner, adversely affect the performance of the Contract;

(6) failure by Contractor to comply with the Mayoral Executive Order establishing the City's anti-discrimination policy relating to the participation of minority, woman and disabled owned disadvantaged business enterprises.

(7) the Procurement Department's determination that the Contractor is not a responsible bidder on the Invitation and Bid, where such determination is made, and is based upon, information received after award of the Contract and/or after execution of the Contract by the Procurement Commissioner and/or after satisfaction of any or all other conditions of a binding Contract set forth in Paragraph 25.i. below;

(8) City debarment of the Contractor from bidding or proposing on City contracts, whether or not such debarment arises from the performance of the Contract;

(9) Contractor so fails to make progress in the performance of the Contract as to endanger performance of the Contract in accordance with its terms;

(10) any other act or omission identified in this DPA or elsewhere in the Contract as an event or condition constituting default.

b. Termination for Default; Notice and Cure

(1) Upon the occurrence of one or more events of default as set forth in Paragraph 15.a.,

(a) the Procurement Commissioner, in his/her sole discretion, may require Contractor to remedy the default within a period of time to be determined by the Procurement Commissioner; or

(b) if the default is not remedied within such period of time (the "Cure Period"), the Procurement Commissioner, in his/her sole discretion, may

(i) terminate the Contract as provided in any one or more of the following Paragraphs of this DPA, if applicable to the event(s) of default: Paragraphs 6.b.(3) or 6.c.(2) (relating to Liquidated Damages for Delay), Paragraphs 7.b.(3), 7.c (3), 7.d.(3), or 7.e.(4) (relating to Standard of Performance and Acceptance), Paragraph 8.a. (relating to Warranty), and/or Paragraphs 12.a.(6)(d) or 12.a.(1) (relating to Maintenance Responsibilities); and/or

(ii) otherwise terminate the Contract, in whole or in part, and exercise any one or more of the remedies provided in Paragraph 15.c.

(2) The City shall notify Contractor of any termination pursuant to this Paragraph 15 by written notice (the "Termination Notice"), setting forth in reasonable detail the reasons for the termination; and termination shall be effective as of the date specified in the Termination Notice (the "Termination Date").

(3) The Cure Period shall not be less than fifteen (15) calendar days (unless the Procurement Commissioner determines that Contractor's default constitutes an emergency endangering the public health, welfare, or safety and requiring a shorter Cure Period). The Procurement Commissioner may, in his/her sole discretion, extend the Cure Period without terminating the Contract if the failure stated in the notice of default cannot be corrected within the period specified in the City's notice and if corrective action is instituted by Contractor within the applicable period and diligently pursued until the failure is corrected.

(4) The Procurement Commissioner may, in his/her sole discretion, require contractor to continue to furnish all equipment, software, products and services required under the contract until the Termination Date, in which case, subject to the remedies enumerated above, the successful bidder shall be paid in accordance with the contract therefor. If the City requires Contractor to cure the event(s) of default, or to continue to furnish products or services until the Termination Date, and Contractor refuses or fails to do so, then such failure shall itself be deemed an event of default under this Paragraph 15, for which the City may exercise any of its rights hereunder.

(5) Contractor shall continue the performance of the Contract, in accordance with its terms, to the extent not terminated under this Paragraph 15, and shall be liable to the City for liquidated damages, as provided in Paragraph 6 (Liquidated Damages for Delay) for each calendar day of delay until the items not terminated are delivered or installed (as applicable) or the services performed; provided, however, that Contractor shall not be liable for such liquidated damages for delays due to causes which would relieve it from liability under Paragraph 15.d.

c. Remedies of the City - Upon termination of the Contract pursuant to this Paragraph 15, the Procurement Commissioner may, in his/her sole discretion, exercise either of the following remedies or both remedies concurrently:

(1) The City may purchase from others, upon such terms and in such manner as the Procurement Commissioner deems appropriate, equipment, software, other products, and/or services similar to and in substitution of those terminated. In such event, Contractor shall, subject to the limitations set forth in Paragraph 16 of this DPA, be solely responsible and liable to the City for the full amount of any costs incurred by the City for such similar equipment, software, other products, and/or services, and Contractor agrees to pay such costs upon receipt of the City's invoice therefor.

(2) The City may appropriate to the payment of the price of such substitute equipment, software, products or services, and the amount of any other loss, cost or damage incurred by the City as a result of Contractor's default, any monies which may then be due and payable to Contractor under the Contract or any other contract that Contractor then has with the City.

d. Force Majeur Exceptions to Contractor Default - The following terms and conditions shall apply solely to this Paragraph 15:

Except with respect to defaults of subcontractors, Contractor shall not be in default under this Paragraph 15 and shall not be liable for costs under Paragraph 15.c if the failure to perform this DPA arises out of causes beyond the control and without the fault or negligence of Contractor, including, and expressly limited to, natural disaster, any act of God, war, civil disturbance, court order, labor dispute, or nonperformance of third parties other than subcontractors and suppliers of Contractor (hereinafter referred to as a "Force Majeur Event"). If the failure to perform is caused by the default of a subcontractor, and if such default is caused by a Force Majeur Event that is beyond the control of both Contractor and subcontractor and is without the fault or negligence of either of them, and unless the items or services to be furnished by the Contractor are delivered in sufficient time to permit Contractor to meet the required performance schedule, then Contractor shall not be in default under this Paragraph 15 and shall not be liable for costs under Paragraph 15.c. In the event Contractor's performance of the Contract is affected by a Force Majeur Event, it shall immediately give written notice to the City, and shall exercise every commercially reasonable effort to resume performance. The Procurement Commissioner, in his/her sole discretion, may deem the failure to provide such written notice or to exercise such commercially reasonable efforts to be an event of default under this Paragraph 15.

e. Remedies Not Exclusive - The rights and remedies of the City provided in this Paragraph 15 shall not be exclusive and are in addition to and not in lieu of any other rights and remedies the City may have at law, in equity, under any bond(s) filed in connection with the Contract or under any other provisions and Paragraphs of the Contract, all of which are reserved to the City; provided, however, that the exercise of such rights or remedies by the City shall be

subject to the limitations set forth in Paragraph 16 (Limitation of Liability) of this DPA, except as expressly provided otherwise in Paragraph 16 or elsewhere in this DPA or the Contract.

16. LIMITATION OF LIABILITY

a. In no event will either party to the Contract be liable for consequential, indirect, incidental, punitive, or special damages. This limitation shall not limit or restrict Contractor's obligation to indemnify and defend the City under Paragraphs 13 and 14 of this DPA.

b. In the event of a default by Contractor under the Contract, the City shall be entitled to recover actual, direct damages and costs incurred as a result of the default; provided, however, that Contractor's liability therefor shall be limited to the greater of:

(1) $250,000; or

(2) the total dollar amount of all Purchase Orders issued to Contractor pursuant to the Contract as of the time of the default.

This limitation shall not limit or restrict Contractor's obligation to indemnify and defend the City under Paragraphs 13 and 14 of this DPA.

c. In no event shall the City's liability to Contractor for damages arising under or in relation to the Contract other than consequential, indirect, incidental, punitive, or special damages, of any kind or nature whatsoever (including, without limitation, direct damages) exceed the greater of: $250,000 or the total dollar amount of all Purchase Orders issued to Contractor pursuant to the Contract as of the time such damages arise.

17. NON-ASSIGNMENT - Neither party to the Contract shall assign or otherwise transfer its rights, duties and/or obligations under the Contract, except with the prior written consent of the other party hereto; any assignment or transfer (including, but not limited to, sub-contract) without such consent shall be null and void. In no event shall the City's consent to any assignment or transfer by Contractor relieve Contractor from its obligations hereunder or change the terms of the Contract. Contractor accepts full responsibility for and guarantees the performance of any and all assignees and transferees (including sub-contractors) of Contractor.

18. CONTRACTOR CERTIFICATION - Contractor certifies that all of the prices, warranties and benefits granted under the Contract are equivalent to or better then Contractor's prevailing prices, warranties, and benefits currently being offered to its non-educational state and local government customers contracting for similar volumes, under similar terms and conditions. If Contractor shall, prior to the City's acceptance of equipment or software under the Contract (or in the case of maintenance services, prior to the start of such services or at any time during the period such services are furnished hereunder), announce a general price reduction or make available to any other non-educational state or local government customer contracting for similar volumes under similar terms and conditions, more favorable prices, warranties or benefits with respect to the equipment or software identified in the Contract, such prices, warranties or benefits will be made available to the City upon the date the general price reduction or change in prices, warranties or benefits becomes effective and the Contract shall be deemed automatically amended to incorporate such reduction or change. It shall be Contractor's obligation to promptly notify the City in writing of such general price reductions or change in prices, warranties or benefits. The City certifies that it is purchasing products hereunder solely for use by the City and not for resale.

19. SOFTWARE AND OTHER INFORMATION/TRAINING

a. General Provisions

(1) Documentation for operating system and/or application software and other information owned by Contractor and its subcontractors (including suppliers) and provided to City for Control of or use with products provided under the Contract or under subsequent orders placed under the Contract shall remain the property of Contractor. Contractor hereby grants the City a personal, non-transferable and nonexclusive basic license to use in the United States, all documentation, technical information, confidential business information and all software and related documentation, in whatever form recorded (all hereinafter designated "Information") which is furnished under the Contract for so long as the following conditions are adhered to.

(2) Such Information:

(a) shall be used by City only to order or to evaluate for that purpose Contractor's products or to install, operate or maintain the particular product for which the information was initially furnished;

(b) shall be used solely for City's internal purposes;

(c) shall not be reproduced or copied in whole or in part except as necessary for use as authorized herein; and

(d) shall, together with any copies thereof, be returned or destroyed, or may if in the form of software recorded on an erasable storage medium, be erased when no longer needed or permitted for use with the product for which it was initially furnished.

(3) Unless Contractor consents in writing such information except for any part thereof which is rightfully obtained by City free of any obligation to keep in confidence or which becomes generally known to the public through acts not attributable to City or is independently developed by the City, shall be treated in confidence by the City.

(4) Such information may be disclosed to other persons, solely for the purpose of installing, operating or maintaining the particular product for which it was furnished, provided such other persons agree in writing in advance of disclosure to the same conditions respecting ownership, use and confidentiality of information contained in this Paragraph and Contractor is furnished with a copy of such writing.

(5) If any product sold or provided hereunder is resold, leased or otherwise provided by City directly or through an intermediary to a subsequent end user, upon written request to contractor by City, Contractor will grant to such end user a personal nontransferable and nonexclusive right to use, in the United States, any related information which Contractor furnished hereunder for use in or with such product, solely for such end user's internal business purposes and solely for us in or with such product. Such right will be granted to the end user provided the end user agrees in writing to the same conditions respecting ownership, use and confidentiality of information as is contained in the Contract and the payment of any applicable fees.

(6) Contractor, for the charges set forth in the attached bid specifications and price schedule shall provide at the City's training site (or such other site as may be mutually agreed to by the parties) all training as described in the attached bid specifications and price schedule.

b. Licensure

(1) Unless otherwise defined in the bid specifications or as provided for in Subparagraphs 20.b.(2) and 20.b.(4), a separate license is required for each machine on which any licensed software will be utilized.

(2) The City is authorized to transfer the license to and use the licensed software on:

(a) a backup machine when the designated machine or an associated unit required for use of the licensed software is temporarily inoperable until operable status is restored and processing on the backup machine is completed; or

(b) another machine for assembly or compilation of the licensed software if the designated machine and its associated units do not provide the configuration required for assembly or completion

(3) The City may order additional licenses for software:

(a) Each additional license for software (operating or applications) already licensed by the City under the Contract shall be ordered separately.

(b) For additional licenses, in lieu of distribution from Contractor, the City may elect to copy the licensed software previously distributed to the City by Contractor in machine readable form. Permission to copy granted in this Subparagraph shall not apply to licensed software provided by Contractor in printed form.

(4) In addition to the basic license for software for each machine, the City may as part of the bid specifications require the Contractor to provide alternate types of licenses,

(a) If the bid specification specifies an "Installation License" the City is also authorized to use the licensed software on any other machine in the same installation as the designated machine. For purposes of the Contract, "same installation" shall mean a single room or contiguous rooms unless otherwise agreed to in writing by Contractor.

(b) If the bid specification specifies "Location License" the City is also authorized to use the licensed software on any other machine in the same location as the designated machine. For purposes of the Contract, "same location" shall mean a single mailing address and contained within a single building unless otherwise agreed to in writing by Contractor.

(c) If the bid specification specifies a "Distributed License" the City is authorized to use the licensed software on other machines not covered under the Installation or Location License. For each such license, the City will:

(1) copy those licensed materials previously distributed in machine readable form to the City by Contractor under the basic license;

(2) provide problem documentation to Contractor through the location of the basic license;

(3) at Contractor's request, recreate any problems at the location of the basic license;

(4) distribute to, install and test on the distributed license designated machine any new release, correction or bypass provided by Contractor to the basic license designated machine;

(5) accept warranty and maintenance services for the distributed licensed software through the basic license location;

(6) not require acceptance testing for such licensed software; and

(7) accept termination of the distributed licensed software if the basic license is discontinued by the City.

(5) For any licensed software that is a data base, the license granted in this Paragraph is further limited to permit access to such database exclusively by the City. Except as provided in Paragraph 20.a.(4), the City shall not make or permit any manner of access to any form of such data base, or part thereof, for the purpose of making available to any other person any data contained in such data base.

(6) The City shall not use, print, copy, translate or display the licensed software, in whole or in part, unless expressly authorized in the Contract.

(7) The City shall not reverse assemble or reverse compile the licensed software in whole or in part.

(8) The City may notify Contractor of the City's intention to change the designation of the machine on which licensed software is to be used.

(9) The City may modify any licensed software in machine readable form and/or merge such materials into other program materials to form an updated work for the City's own use; provided that, upon discontinuance of the licensed software, the licensed software will be completely removed from the updated work and dealt with under the Contract as if permission to modify or merge had never been granted. Any portion of the licensed software included in such an updated work will continue to be subject to all terms of the Contract.

(10) When the City has issued a Purchase Order for licensed software that is available in printed form, it may request Contractor to ship such printed material up to six months prior to the shipment of the machine readable portion. The printed materials thus provided may not be copied in any form for any purpose without the prior written permission of Contractor.

20. TITLE TO EQUIPMENT - Title to equipment furnished hereunder shall pass to the City upon acceptance of the equipment (i.e. on the first day of the successful performance period). Contractor

shall have a purchase money security interest in the accepted equipment until all charges set forth in the Purchase Order are paid in full.

21. **INSURANCE -** Unless otherwise specified, the successful bidder (referred to in this Paragraph as "contractor") shall, at its sole cost and expense, procure and maintain in full force and effect, during the entire period of the contract (including any applicable warranty and/or renewal periods) the minimum types of insurance specified below. All insurance shall be procured from reputable insurers authorized to do business in the Commonwealth of Pennsylvania and shall be acceptable to the City. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis. The City of Philadelphia, its officers, employees and agents are to be named as additional insureds on all policies required hereunder, except the Workers' Compensation and Employers' Liability. Also, an endorsement is required stating that the coverage afforded these parties as additional insureds will be primary to any other coverage available to them. The City's coverage as an additional insured shall be primary coverage. The insurance shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, canceled or non-renewed. Certificates of insurance evidencing the required coverages shall be submitted to the City within fifteen (15) days of notice of contract award.

The City reserves the right to require the contractor to furnish certified copies of the original policies of all insurance required hereunder at any time upon fifteen (15) days prior written notice. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in this contract by the contractor to the City or to limit the contractor's liability under this contract to the limits of the policies of insurance required to be maintained by the contractor hereunder.

a. WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

(1) Workers' Compensation -Statutory limits.
(2) Employers Liability - $500,000 Each Accident - Bodily Injury by Accident; $500,000 Each Employee - Bodily Injury by Disease; $500,000 Policy Limit -Bodily Injury by disease
(3) All states endorsement

b. GENERAL LIABILITY INSURANCE

(1)Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
(2) Coverage: Premises operation; Blanket contractual liability; Personal injury liability (employee exclusion deleted); Products and completed operations; Independent Contractors; Employees as additional insured; Cross liability; Broad form property damage (including loss of use) liability; Asbestos abatement liability coverage (Note: Required for asbestos abatement projects only).

c. AUTOMOBILE LIABILITY INSURANCE

(1) Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including

death) and property damage liability.

(2) Coverage: owned, non-owned and hired vehicles.

d. PROFESSIONAL LIABILITY INSURANCE

Contractor shall be required to furnish professional liability insurance if, but only if, professional liability insurance is required elsewhere in the Invitation and Bid. If such insurance is required, it shall be furnished in the amounts, and in accordance with the terms and conditions, that are specified in the applicable provision of the Invitation and Bid.

22. PERFORMANCE SECURITY - The City of Philadelphia requires performance security for contracts greater than $30,000. If the amount of the contract to be awarded is greater than $30,000 but less than or equal to $500,000, the successful bidder is required to participate in the City's Master Performance Security Program by paying to the City a non-refundable fee of $5.00 per thousand dollars of the contract amount for firm limit contracts and $4.00 per thousand dollars of the contract amount for requirements contracts, or as otherwise specified in the Invitation and Bid. If the amount of the contract to be awarded is in excess of $500,000, or an individual performance bond and/or labor and materialmen's bond is required in the Invitation and Bid, the successful bidder is required to furnish such individual performance bond and/or labor and materialmen's bond, issued by a surety approved by the City, on a form prepared by the City's Law Department and in the amount specified for the bond(s) in the Invitation and Bid; or if no such amount is provided in the Invitation and Bid, in the amount specified for the bond(s) in the notice of contract award. The successful bidder is also required to pay a bond preparation fee to the City's Law Department in an amount prescribed by Chapter 17-700 of The Philadelphia Code; a schedule of such fees may be obtained from the Procurement Department's Public Information Office.

23. CENTURY DATE STANDARD

a. Covered Work - Contractor represents and warrants that the following items furnished under the contract shall conform to the City of Philadelphia Century Date Standard set forth in Paragraphs 23.b.(1)-(4) below. Such warranties and representations are in addition to, and not in lieu of, Contractor's warranties and representations set forth in Paragraph 8, Warranty, of this DPA and elsewhere in the Contract, and shall not limit or excuse any of Contractor's obligations under such warranties.

(1) all operating system software, application software, and other software, and all firmware, including, but not limited to, any authorization code or other code incorporated in such software or firmware for the purpose of disabling or limiting the functionality of the software under conditions specified by the manufacturer or publisher of the software;

(2) all equipment, including but not limited to computer hardware, and all components thereof, including, but not limited to, the following components:

(a) Programmable Read Only Memory (PROM), Erasable Programmable Read Only Memory (EPROM), Read Only Memory (ROM), Random Access Memory (RAM) and all other memory chips, devices, and components;

(b) Basic Input/Output System (BIOS) chips, devices, and components;

(c) any and all other semi-conductor chips and other chips, devices, and components of computer hardware and other equipment that in any way

incorporate and/or depend for their operation on machine readable code that is embodied in the chip, device, or component.

b. Century Date Standard - The City of Philadelphia Century Date Standard consists of the following standards for General Integrity, Date Integrity, and Interface Integrity:

(1) General Integrity. No value for current date will cause interruptions in the operation of the software, firmware, or equipment before, during, or after January 1, 2000, and the software, firmware and equipment will operate through March 1, 2000 and thereafter, without any date-related faults or failures and without producing inaccurate data.

(2) Date Integrity. All manipulations of time-related data (including, without limitation, dates, durations, days of week, month, and year) will produce results that conform to the manufacturer's specifications for the software or equipment for all valid date values within the application domain, before, during, and after January 1, 2000.

(3) Interface Integrity.

Explicit Century: Date elements in interfaces and data storage shall permit specification of the century by means that will eliminate all ambiguity as to the applicable century for date and date-related data, before, during and after January 1, 2000.

Implicit Century: For any date element represented without century, the correct century shall be unambiguous for all manipulations involving that element before, during, and after January 1, 2000.

(4) Source code. Source code for software shall comply with the standard set forth in Federal Information Processing Standard Publication 4-2 (FIPS PUB 4-2), Representation of Calendar Date for Information Interchange.

c. Defects and Errors - Contractor shall, at no cost to the City, repair any equipment, firmware and/or software that does not conform to the standards set forth in Paragraph 23.b and cause it to conform such standards, or shall replace the software or equipment with software that does conform to such standards.

d. Reservation of Rights - The City may, in its sole discretion:

(1) elect to order and/or accept equipment or software that does not comply fully or exactly with Subparagraphs 23.b.(1)-(4) if, in the City's sole judgment, the equipment or software complies substantially with these Subparagraphs, and/or complies sufficiently to satisfy the City's requirements in purchasing the equipment or software; and/or

(2) accept representations and/or warranties with respect to the equipment or software that are different from those set forth in Paragraphs 23.a-b, and/or a century date standard that is different from the century date standard set forth in Paragraph 23.b., if, in the City's sole discretion, such different representations, warranties, and/or century date standard are sufficient to satisfy the City's requirements in purchasing the equipment or software.

24. YEAR 2000 COMPLIANCE OF CONTRACTOR

a. "Year 2000 Compliant" - For purposes of this Article 18.2 only, a system, process, or piece of equipment is "Year 2000 Compliant" if it can operate normally before, during, and after midnight on December 31, 1999 without abnormal or unusual user intervention. This includes but is not necessarily limited to the following operations: accepting date input, providing date output, performing calculations and comparisons on dates or portions of dates, correctly accessing and processing date-dependent information, and correct date interpretation and manipulation for all valid dates; sequencing by date must produce normal results for all dates. A corporation, partnership, sole proprietor, or other entity is Year 2000 Compliant if all systems, processes, and pieces of equipment that are required for the normal conduct of its business and for the delivery of goods and services to its customers are Year 2000 Compliant.

b. Contractor's Representations and Warranties - Contractor represents and warrants as follows:

(1) that it has undertaken a detailed review and assessment of all areas within its business and operations that are material to its ability to furnish the Services required under the Contract in accordance with the terms of the Contract (including but not limited to terms relating to delivery dates and performance schedules) and that it reasonably believes could be adversely affected by Contractor's failure to be Year 2000 Compliant;

(2) that it has developed a plan and timeline for becoming Year 2000 Compliant prior to January 1, 2000;

(3) that it has implemented, or will implement, such plan in accordance with its timeline in all material respects;

(4) that prior to January 1, 2000, it will be Year 2000 Compliant in all respects that are material to its ability to furnish the Services required under the Contract in accordance with the terms of the Contract (including but not limited to terms relating to delivery dates and performance schedules); and

(5) that it shall become Year 2000 Compliant at no additional cost to the City. In the event that Contractor exchanges electronic data with the City, Contractor further represents and warrants that such exchange of data, the exchanged data, and any hardware or software interface with City computers that is required for such data exchange, will not cause any information system of the City to fail to be Year 2000 Compliant and will not adversely affect, directly or indirectly, any electronic information system of the City or cause errors or defects in date or date-dependent information processed by the system.

The forgoing warranties and representations are in addition to, and not in lieu of, Contractor's warranties and representations set forth in Paragraph 8, Warranty, of this DPA and elsewhere in the Contract, and shall not limit or excuse any of Contractor's obligations under such warranties.

c. Information Requests - Upon the written request of the City, Contractor shall furnish evidence sufficient to demonstrate that the foregoing representations and warranties are correct.

d. Reservation of Rights - The City may, in its sole discretion, accept representations and/or warranties and/or definition(s) of "Year 2000 Compliance" that are different from those set forth in Paragraphs 24.a.-b. if, in the City's sole discretion, such different representations, warranties, and/or definition(s) are sufficient to satisfy the City's requirements in purchasing the equipment or software required under the Contract.

25. GENERAL TERMS AND CONDITIONS OF BIDDING - Except as expressly stated otherwise in the bid specifications or elsewhere in the Invitation and Bid, the following general terms and conditions of bidding shall apply:

a. Preparation and Submission of Bids - All bids must be written in ink or typewritten and made on the forms issued and signed in ink, by a person with legal authority to bind the bidder. This Invitation and Bid and any contract awarded hereunder shall include all of the following, as set forth in Paragraph 2.b, *Contract*, and Paragraph 2.l, *Invitation and Bid*, of this DPA: (i) the form titled "Invitation And Bid" and bearing the "Bid No." for this procurement; (ii) this DPA; (iii) all attachments, exhibits, and appendices to such form and to this DPA; (iv) all addenda to the Invitation and Bid issued by the Procurement Department. The Contract shall include, in addition to the foregoing documents, all Purchase Orders issued by the Procurement Department pursuant to the Contract, which are hereby incorporated into the Contract. It is the sole responsibility of the bidder to ensure that it has received any and all addenda to the Invitation and Bid issued by the Procurement Department and the Procurement Commissioner may in his/her sole discretion reject any bid for which all addenda have not been executed and returned in accordance with the instructions provided therein. No bid may be considered if received after the date and time for the opening of bids established by this Invitation and Bid, nor may any bid be modified after that date and time. The time of bid opening shall be the time displayed on the City's official bid clock. In the event of any discrepancy between actual time and the City's official bid clock, the latter shall determine the time of bid opening.

b. Specifications - When a formal, numbered specification is referred to in this Invitation and Bid, no deviation therefrom will be permitted and the bidder will be required to furnish articles and/or services in conformity with that specification. When catalogues, model numbers, trade names, or cuts are listed in this Invitation and Bid, they are, unless otherwise specified, included for the purposes of furnishing bidders with information concerning the style, type or kind of article and /or service desired. A bidder may offer an article and/or service which he/she certifies to be equal or better in quality, performance and other essential characteristics. If submitting an alternate the bidder must specify the alternate (e.g., make and model #) in the bid and submit with the bid a complete description of the article (including any technical literature) and/or service proposed to be furnished. Failure to do so, will require the bidder to furnish the article and/or service specified in the Invitation and Bid. The Procurement Commissioner reserves the sole right to determine whether alternates offered are equal or better. Unless otherwise provided in the bid specifications, all items offered by the bidder must be new. A “new” item is one which will be used first by the City. This clause shall not be construed to prohibit bidders from offering goods, supplies, equipment or materials containing recycled materials or printing with recycled content; bidders intending to provide goods made with recycled materials are expected to so notify the Procurement Department.

c. Types of Bidder Restricted - Bidders must not be a party to more than one bid for the same article or service. A violation of this condition may, in the sole discretion of the Procurement Commissioner, result in rejection of any or all such bids in which the bidder is interested.

d. Quantities Awarded - For requirements contracts only (which shall be so identified elsewhere in the Invitation and Bid), the articles and quantities of such articles as set forth in the Invitation and Bid are estimates and the Procurement Commissioner, in his/her sole discretion, may make an award for all or some of the articles bid and in such quantities as the Procurement Commissioner shall deem appropriate. For firm limit contracts, it is the City's intent to award based upon the quantities set forth in the Invitation and Bid, but the City reserves the right to award more or less.

e. Bid Security - Unless the bidder is properly covered under the City's Annual Master Bid Security Program, or an individual bid bond is required elsewhere in the Invitation and Bid, all bids must be accompanied by a Certified Check, Treasurer's Check, Cashier's Check, Bank Money Order or United States Postal Money Order made payable to the order of "The City of Philadelphia" in the proper amount as shown below:

AMOUNT OF BID OR EST. AMT. CONTRACT	AMOUNT OF CERTIFIED CHECK
$ 30,000.00 or less	No Check Required
$ 30,000.01- $ 99,999.99	$ 500.00
$ 100,000.00 - $ 249,999.99	$ 2,000.00
$ 250,000.00- $ 499,999.99	$ 4,000.00
$ 500,000.00 or more	$ 6,000.00

When computing amount of Bid for Certified Check purposes, do NOT deduct for trade-ins.

Bids in excess of $500,000 cannot be covered by the Annual Master Bid Security Program and bidder must submit a Certified Check, Treasurer's Check, Cashier's Check, Bank Money Order or United States Postal Money Order made payable to the order of "The City of Philadelphia" in the required amount. After the lowest responsive and responsible bidder has been determined, the Procurement Department shall refund, with the exception of the non-refundable fee paid for participation in the City's Annual Master Bid Security program, the bid security of every bidder except the lowest responsive and responsible bidder. Upon return of the duly executed contract documents and all required fees, and the furnishing of any required bonds or other performance security by the lowest responsive and responsible bidder, its bid security will be refunded.

f. Cancellation and Award - The Procurement Commissioner, in his/her sole discretion, may cancel any Invitation and Bid prior to bid opening. After bid opening, the Procurement Commissioner, in his/her sole discretion, may reject all bids, if deemed in the best interest of the City. In all cases where a contract award is made by the Procurement Department, the bidder is bound by the terms and conditions of the Invitation and Bid upon the submission of its bid. All bids are valid for a period of not less than 60 days, or as otherwise specified in the Invitation and Bid. If the bid has not been awarded within the specified period of time, the bid shall be valid for subsequent award only upon the express consent of the bidder, with no change to the submitted bid. All contract awards shall be made by the Procurement Department upon written notice to the bidder that is determined by the Procurement Department to be the lowest responsive and responsible bidder.

g. Responsiveness of Bids - Subject to the right of the Procurement Commissioner to waive non-responsiveness of bids as set forth below in this Paragraph 25, the specifications, requirements, and terms and conditions set forth in this DPA and elsewhere in the Invitation and Bid are mandatory and must be strictly followed by all bidders in the preparation and

submission of its bids. After bids are opened, the Procurement Department, and other City departments or agencies where appropriate or specified, shall review all bids for responsiveness to these Terms and Conditions of Bidding and the specifications and requirements included in this Invitation and Bid. Any bid which is incomplete, obscure, conditional, or unbalanced, which contains additions not called for in the Invitation and Bid or irregularities of any kind, including alterations or erasures, or which fails to conform in any respect to such specifications, requirements, and terms and conditions, is non-responsive and shall be rejected, except where the Procurement Commissioner, in his/her sole discretion, determines that the non-responsiveness is not material to the Invitation and Bid, or that a waiver of the non-responsiveness is otherwise permitted by the Invitation and Bid or by this DPA or by law. The Procurement Department's determination of non-responsiveness shall be final and any bid rejected as non-responsive shall not be eligible for contract award.

h. Responsibility - Unless otherwise specified elsewhere in the Invitation and Bid, after the bids are opened, the Procurement Department, and other City departments or agencies where appropriate or specified in the Invitation and Bid or required by law or regulation, shall review and may investigate the responsibility of the bidder, including, but not limited to, the bidder's qualifications, references, ability (including, but not limited to financial and technical capacity) to perform the contract resulting from this Invitation and Bid in accordance with its terms, and integrity. All determinations of bidder responsibility shall be vested in the sound discretion of the Procurement Commissioner and other City officials. Any bidder who is found not responsible shall be ineligible for award of the contract. Bidders found not responsible will be notified of such determination and the reasons therefore in writing by the Procurement Department, and shall have the right to contest the determination by submitting to the Procurement Department, within forty-eight (48) hours after receipt of its written determination, a written request for reconsideration that includes information relating to the bidder’s qualifications and responsibility and demonstrating the insufficiency of the reasons stated in the written determination for finding the bidder not responsible. Any further determination of a contesting bidder’s responsibility shall be vested in the sound discretion of the Procurement Commissioner and other City officials.

i. Conditions of Binding Contract - For bids in an amount less than or equal to $25,000, the signed bid of the lowest responsive and responsible bidder shall become a contract binding the City as of the date on which the Procurement Department issues its written notice of the Procurement Commissioner's award of the Contract to the bidder, without the satisfaction of further conditions by the bidder. For bids in an amount greater than $25,000, however, such signed bid shall not become a contract between the City and the successful bidder, and shall not bind or obligate the City in any way, unless and until all of the following conditions (1)-(5) are fully satisfied:

(1) The Procurement Department has issued its written notice of the Procurement Commissioner's award of the Contract to the successful bidder;
(2) The successful bidder posts sufficient Performance Security, as required in the Invitation and Bid, within the time specified in the written notice of award, and a Labor and Materialmen's Bond, if and as required by the Invitation and Bid, within the time specified in the written notice of award;
(3) The Contract Documents, as executed by the successful bidder, are approved as to form by the City's Law Department;
(4) The availability of funds is certified by the City's Director of Finance and the City Controller; and
(5) The Contract Documents are executed by the Procurement Commissioner.

The Procurement Commissioner may, in his/her sole discretion, cancel any contract award if any of the above conditions (1)-(5) are not satisfied, or if the Procurement Commissioner, in his/her sole discretion, determines that cancellation is in the best interests of the City. The bidder agrees that in the event of such cancellation, it shall not have any claim against the City, including any claim for breach of contract or of any other legal duty, or for lost profits, costs, damages, or expenses of any kind.

j. Failure to Execute Contract - Any bidder not lawfully released from its bid, who refuses to execute and/or be bound by a contract in accordance with its bid or who fails, refuses or is unable to furnish any required bonds, performance security or insurance, as may be required by this DPA and elsewhere in the Invitation and Bid, shall be liable for the entire amount of its bid security, as liquidated damages (not a penalty) to the City; or if bid security is furnished under the Annual Master Bid Security Program, shall be liable for ten (10) per cent of the amount of its bid, as liquidated damages (not a penalty) to the City; or where the damages are readily ascertainable by the City, for the actual loss, cost or damage incurred by the City as a result of the bidder's failure to execute the contract or to furnish such bonds, performance security or insurance.

k. Bid Processing Fee - In addition to bid security and any other fee or monies required to be submitted with the bid, the bid shall be accompanied by a non-refundable processing fee in the form of a separate Standard Check, Bank Money Order or United States Postal Money Order made payable to the order of "City of Philadelphia" in an amount based on the gross amount of the bid in accordance with the formula below. Cash is not acceptable.

AMOUNT OF BID OR ESTIMATED CONTRACT	AMOUNT OF PROCESSING FEE
$ 30,000.00 or less	No Check Required
$ 30,000.01 to $ 100,000.00	$ 10.00
$ 100,000.01 to $ 300,000.00	$ 30.00
$ 300,000.01 to $ 500,000.00	$ 50.00
$ 500,000.01 to $ 1,000,000.00	$ 100.00
$ 1,000,000.01 to $ 2,000,000.00	$ 200.00
$ 2,000,000.01 to $ 3,000,000.00	$ 300.00
$ 3,000,000.01 to $ 4,000,000.00	$ 400.00
$ 4,000,000.01 to $ 5,000,000.00	$ 500.00
$ 5,000,000.01 or more	$ 600.00

Failure to submit the Bid Processing Fee may result in rejection of the bidder's bid. In addition, if a contract award is made pursuant to this Invitation and Bid, any unpaid bid processing fees owed by the successful bidder to the City must be paid prior to the City's release of any payments under the resulting contract.

l. Price Increases and Discounts - All articles must be delivered at the price(s) bid, FOB Destination Point. Bids containing reservations of the right to increase the price(s) bid , including, but not limited to, late payment charges, will not be considered, except where the Procurement Commissioner, in his/her sole discretion, finds it in the City's best interest to do so. Discounts offered for payment may be a factor in the awarding of bids only in the event of tie bids. (In the event of an absolute tie the award decision will be made in the best interest of the City as determined by the Procurement Commissioner in his/her sole discretion.) Discounts must be for a period of at least 15 days to be so considered. Discounts offered shall be assumed to be from gross price unless otherwise indicated.

m. Processing of Payments - All payments will be processed and paid in accordance with the City's standard payment procedures and payment cycle (i.e. normally within 45-60 calendar days following receipt of proper invoices). Any credit due to the City hereunder may be applied against Contractor invoices with appropriate information attached.

26. MISCELLANEOUS PROVISONS

a. Tax Exemption - The City of Philadelphia is exempt from the payment of any federal excise or transportation taxes and any Pennsylvania Sales Tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in list prices, bidder may quote the list price and shall show separately the amount of the federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the City. In the event bidder pays any sales or use tax, bidder hereby assigns to City, or City's agent, all of its rights, title and interest in any sales or use tax which may be refunded as a result of the purchase of any articles furnished in connection with the contract and bidder, unless directed by the City, shall not file a claim for any sales or use tax refund subject to this assignment. Bidder authorizes the City, in City's name or the name of bidder, to file a claim for refund of any sales or use tax subject to this assignment.

b. Tax Requirements - Any contractor, or vendor of goods, wares and merchandise, or purveyor of services, who bids on and is awarded a contract by the City and/or School District of Philadelphia, is subject to Philadelphia's business tax and Ordinances and regulations. The City Solicitor has ruled that anyone who is awarded a contract by the City and/or School District pursuant to a bid has entered into a contract within the City, and the subsequent delivery of goods into the City or performance of services within the City constitutes "doing business" in the City and subjects the successful bidder, including but not limited to, one or more of the following taxes:

(1) Business Privilege Tax
(2) Net Profits Tax
(3) City Wage Tax

The successful bidder, if not already paying the aforesaid taxes, is required to apply to the Department of Revenue, 1401 John F. Kennedy Blvd., Public Service Concourse, Municipal Services Building, Philadelphia, PA 19102, for a tax identification number and to file appropriate business tax returns as provided by law. Questions should be directed to the Business and Earnings Tax Unit at (215) 686-6600.

c. Tax Indebtedness - The City of Philadelphia does not wish to do business with tax delinquents or other businesses indebted to the City. In furtherance of this policy, the following certifications have been developed and shall form a part of any contract resulting from this Invitation and Bid. The successful bidder, or other entity contracting with the City is referred to below as the "contractor".

(1) Contractor's Certification of Non-Indebtedness - Contractor hereby certifies and represents that contractor and contractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia (the "City"), and will not at any time during the term of this contract (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In

addition to any other rights or remedies available to the City at law or in equity, contractor acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to contractor and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this contract for default (in which case Contractor shall be liable for all costs, losses and other damages resulting from the termination).

(2) Subcontractor's Certification of Non-Indebtedness - Contractor shall require all subcontractors performing work in connection with this contract ("subcontractor" shall also include suppliers providing goods or materials) to be bound by the following provision and contractor shall cooperate fully with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

"Subcontractor hereby certifies and represents that subcontractor and subcontractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia ("City"), and will not at any time during the term of contractor's contract with the City (the "contract"), including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available at law or in equity, subcontractor acknowledges that any breach of or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to subcontractor for services rendered in connection with the contract and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to subcontractor and/or the termination of subcontractor for default (in which case subcontractor shall be liable for all costs, losses and other damages resulting from the termination)."

d. Ethics Requirements - To preserve the integrity of City employees and maintain public confidence in the competitive bidding system, the City intends to vigorously enforce the various ethics laws as they relate to City employees in the bidding and execution of City contracts. Such laws are in three categories:

(1) Gifts. Executive Order No. 16-92 prohibits City employees from soliciting or accepting anything of value from any person or entity seeking to initiate or maintain a business relationship with the City of Philadelphia, its departments, boards, commissions and agencies. All City employees presented with gifts or gratuities as indicated in Executive Order 16-92 have been instructed to report these actions to the appropriate authorities. All bidders, agents or intermediaries who are solicited for gifts or gratuities by City employees are urged to report these incidents to the Inspector General, Aramark Tower, Third Floor, 1101 Market Street, Philadelphia, PA 19107.

(2) City employee interest in City contracts. In accordance with Paragraph 10-102 of The Philadelphia Home Rule Charter, no bid shall be accepted from, or contract awarded to, any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. All bidders are required to disclose any current City employees or officials who are employees or officials of the bidder's firm, or who otherwise would have a financial interest in the contract.

(3) Conflict of Interest. Both the State Ethics Act and the City Ethics Code prohibit a public employee from using his/her public office or any confidential information gained thereby to obtain financial gain for himself/herself, a member of his/her immediate family, or a business with which he/she or a member of his/her immediate family is associated. "Use of public office" is avoided by the employee or official publicly disclosing the conflict and disqualifying himself/herself from official action in the matter, as provided in The Philadelphia Code §20-608.

e. Non-Discrimination

(1) In the performance of the Contract, Contractor shall not discriminate nor permit discrimination against any person because of race, color, sex, religion, national origin- or ancestry. Contractor agrees that such discrimination constitutes a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available in law or equity.

(2) In accordance with Chapter 17-400 of The Philadelphia Code, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available in law or equity. Contractor agrees to include the immediately preceding sentence, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to the Contract. Contractor further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available in law or equity.

f. MacBride Principles - Paragraph 17-104(2)(b) of The Philadelphia Code prohibits the City from accepting bids from companies that do business in Northern Ireland, unless that business has implemented the fair employment principles embodied in the MacBride Principles. In furtherance of this Ordinance, bidder makes the following certification and representations:

(1) In accordance with Paragraph 17-104 of the Philadelphia Code, bidder by execution of its bid certifies and represents that (i) bidder (including any parent company, subsidiary, exclusive distributor, or company affiliated with Bidder) does not have, and will not have at any time during the term of any contract resulting from this bid (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product to be provided to the City under any resulting contract will originate in Northern Ireland, unless Bidder has implemented the fair employment principles embodied in the MacBride Principles.

(2) In the performance of any contract resulting from this bid, Bidder agrees that it will not utilize any suppliers or subcontractors at any tier (i) who have (or whose parent subsidiary, exclusive distributor of company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier or subcontractor has

implemented the fair employment principles embodied in the MacBride Principles. Bidder further agrees to include provisions with this Subparagraph (b), with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of any resulting contract.

(3) Bidder agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Paragraph 17-104 of The Philadelphia Code. Bidder expressly understands and agrees that any false certification or representation in connection with this Subparagraph (c) and/or any failure to comply with the provisions of this Subparagraph (c) shall constitute a substantial breach of any contract resulting from this Invitation and Bid entitling the City to all rights and remedies provided in this bid or otherwise available in law (including, but not limited to Paragraph 17-104 of the Philadelphia Code) or at equity. In addition, it is understood that false certification or representation is subject to prosecution under 18 Pa.C.S. Paragraph 4904.

g. Compliance With Law - In performing the work required under the Contract, Contractor shall comply with all federal, state and local laws, statutes and ordinances, and with all applicable regulations of federal, state and local governmental departments, boards, agencies and commissions.

h. Force Majeur - Contractor shall not be in default under Paragraph 15 of this DPA if any event of default as provided therein is the result of a Force Majeur Event as defined in Paragraph 15.d of this DPA. The City shall not be liable to Contractor for any failure to perform any of its obligations under the Contract if such failure is because of natural disaster, any act of God, war, civil disturbance, court order, labor dispute, or nonperformance of third parties.

i. Headings Not Controlling - Headings used in this DPA and elsewhere in the Contract are for reference purposes only and are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of the Contract or the intent of any provision of this DPA or elsewhere in the Contract.

j. Governing Law; Forum - The Contract shall be governed by the laws of Pennsylvania (including, but not limited to, the Pennsylvania statute of limitations) and shall be executed and performed in strict and exact accordance with the Philadelphia Home Rule Charter, as well as any applicable rules, statutes, ordinances, methods, regulations or procedures. The parties agree that any lawsuit, action, claim or legal proceeding involving, directly or indirectly, any matter arising out of or related to the Contract or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the parties that jurisdiction over any lawsuit, action, claim, or legal proceeding arising under the Contract shall lie exclusively in either of these two forums. The parties further agree not to raise any objection to any such lawsuit, action, claim or legal proceeding which is brought in either of these two forums and the parties expressly consent to the jurisdiction and venue of these two forums.

k. Remedies Not Exclusive - In no event shall the rights and remedies of the City provided in any paragraph, subparagraph, or provision of this DPA or elsewhere in the Contract be exclusive, and all such rights and remedies are in addition to and not in lieu of any other rights and remedies the City may have at law, in equity, under any bond(s) filed in

connection with the Contract or under any other provision, paragraph, of subparagraph of this DPA or the Contract, all of which are reserved to the City; provided, however, that the exercise of such rights or remedies by the City shall be subject to the limitations set forth in Paragraph 16 (Limitation of Liability) of this DPA, except as expressly provided otherwise in Paragraph 16 or elsewhere in the Contract.

l. City's Right to Audit Records - From time to time during the term of the Contract and for a period of five (5) years after termination of the Contract, the City (including, without limitation, the Office of the City Controller) may audit Contractor's performance under the Contract. If so requested, Contractor shall submit to the City all vouchers and invoices presented for payment pursuant to the Contract, all cancelled checks, work papers, books, records and accounts (whether in electronic, paper, or other form or medium) upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to the Agreement, all of which shall be subject to periodic review and audit by the City. Contractor shall make available, within the City, at reasonable times during the term of the Contract and for the period set forth above in this Subparagraph, all records (whether in electronic, paper, or other form or medium) pertaining to the Contract for the purpose of inspection, audit or reproduction by authorized representatives of the City. Contractor shall retain all such records, books of account and documentation pertaining to the Contract for the period set forth above in this Subparagraph; however, if any litigation, claim or audit is commenced prior to expiration of such period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal; if applicable law requires or permits a longer period, then the records shall be retained for such longer period.

27. ENTIRE AGREEMENT - The Contract, as defined in Paragraph 2.b of this DPA, constitutes the entire understanding of the parties with respect to the subject matter hereof**,** and neither it nor the rights and obligations hereunder may be changed, modified or waived except by an instrument in writing signed by all of the parties hereto. The parties hereto bind themselves, their heirs, executors, administrators, successors and assigns for the faithful performance of the Contract.

SIGNING OF BIDS

NOTE: THE BIDDER MUST EXECUTE ITS BID BY SIGNING THIS DATA PROCESSING AGREEMENT AS PROVIDED BELOW. ANY BID THAT IS NOT EXECUTED IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED BELOW OR THAT DOES NOT INCLUDE STREET ADDRESS, CITY, STATE AND PHONE NUMBER, MAY, IN THE SOLE DISCRETION OF THE PROCUREMENT COMMISSIONER, BE REJECTED.

If bid is by an INDIVIDUAL or a PARTNERSHIP, date and sign the bid on this page, with original signatures, in ink.

Contractor and the City of Philadelphia, intending to be legally bound by this Data Processing Agreement and all other documents comprising the Contract, have caused the Contract to be executed by their respective duly authorized officers:

Date of Bid: _____, _____

_____
Signature of Owner, Partner

_____
Type or Print Name and Title

_____
Business Name of Bidder/Contractor

_____
_____
Address, including Zip Code

_____
Telephone Number, including Area Code

If bid is by a CORPORATION, date and sign the bid here with original signatures, in ink, by (a) President or Vice-President of the corporation AND (b) Secretary, Assistant Secretary, Treasurer or Assistant Treasurer of the corporation; and (c) affix the seal of the corporation. If the form is not signed by the President or a Vice-President and Secretary, Assistant Secretary, Treasurer or Assistant Treasurer, attach a duly certified corporate resolution authorizing the person signing in place of such officers to execute this bid for the corporation.

Contractor and the City of Philadelphia, intending to be legally bound by this Data Processing Agreement and all other documents comprising the Contract, have caused the Contract to be executed by their respective duly authorized officers:

CORPORATE SEAL

Date of Bid: _____, _____

_____
Corporate or Business Name of Bidder/Contractor

_____
_____
Address, including Zip Code

_____
Telephone Number, including Area Code

_____
Signature of President or a Vice-President

_____
Type or Print Name and Title

_____
Signature of Secy. Asst. Secy,
Treas. or Asst. Treas.

_____
Type or Print Name and Title

THE CITY OF PHILADELPHIA

_____
Procurement Commissioner

APPROVED AS TO FORM

_____
Assist./Dep. City Solicitor