

**CITY OF SOMERVILLE, MASSACHUSETTS
SOMERVILLE SCHOOL COMMITTEE
8 BONAIR STREET
SOMERVILLE MA 02145
BIDDING INSTRUCTIONS FOR
Bid # S2016-04**

Enclosed you will find an invitation to bid for: Repair of Refrigerators, Freezers and Refrigeration Exhaust Systems for the Somerville School Food Service Department on an as needed basis for one year from March 1, 2016 to February 28, 2017 with two (2), one-year options to renew.

When submitting bid, please identify the bid item and number clearly. "Bid #S2016-04, Date – February 17, 2016, Time – 2:00 p.m. on the outside of your sealed Bid and deliver to Somerville School Department, Finance Office, 8 BonairStreet, Somerville, MA 02145.

BIDS SUBMITTED MUST BE AN ORIGINAL.

The completion of the following forms is necessary for consideration of a potential bid award. When submitting bid documents, please retain the order of documents as originally provided.

- 1) "Notice to Bidders" signed by person submitting bid.
- 2) Quality Requirements
- 3) Reference Form
- 4) Bid Pricing Page
- 5) "Signature Form" complete when submitting your bid.
- 6) Non Collusion Form and Tax Compliance Certification
- 7) Certificate of Authority Form
- 8) Somerville Living Wage Form
- 9) Form for General Bid
- 10) Prevailing Wage Compliance Form

NOTE: If Vendor is incorporated an updated "CERTIFICATE OF GOOD STANDING" from the Commonwealth of Massachusetts will be needed for the awarded vendor only.

Please review and return with your sealed bids as sent. Also, insure that all forms are completed and your bid response is submitted as requested.

THIS IS A TWO-SIDED DOCUMENT

NOTICE TO BIDDERS

BID #S2016-04

All bids must be in accordance with terms and conditions set forth herein as stated.

- SECTION A. Sealed bids for: **Repair of Refrigerators, Freezers and Refrigeration Exhaust Systems**, from **March 1, 2016 to February 28, 2017** with two (2), one-year options to renew. The bids will be received at the office of the Somerville School Department, Office of the Finance Director, 8 Bonair Street, Somerville, MA. 02145 no later than **2:00 p.m., Tuesday, February 17, 2016** at which time and place they will be publicly opened and read.
- SECTION B. Forms of price bid, specifications and terms of contract can be obtained at the above office on or after **Wednesday, January 27, 2016**.
- SECTION C. Bid envelopes shall be clearly marked as follows: **"Bid #S2016-04, Bid for: "Repair of Refrigerators, Freezers and Refrigeration Exhaust Systems"; Date – February 17, 2016, Time – 2:00 p.m.**
- SECTION D. If the **awarded** vendor is a Corporation, vendor must comply with request for "Certificate of Good Standing". See attached instructions.
- SECTION E. **INSURANCE: Awarded Vendor** must comply with insurance requirements as stated in the bid package.
- SECTION F. Somerville Living Wage Ordinance – see Specifications Prevailing Wage and requirements
- SECTION G. The requirements in Section **E or F** will be waived if the words "Non-Applicable" (**N/A**) are inserted in the space designated.
- SECTION H. The copy of the bid deposited with the Finance Director will be accompanied by a bid guarantee in the amount of 5% of the estimated bid amount. A Bid bond, Certified Check, Treasurer's Check, or Cashier's Check made payable to the City must be submitted with each bid. Said bid guarantee will become the property of the City of Somerville if the proposal is accepted and the bidder either neglects or refuses to comply with the terms of the proposal. Bid guarantee will be returned within 30 days to all unsuccessful bidders.
- SECTION I. A Payment Bond in the amount of 50 % of the total contract price will be required by the City, from the awarded vendor, along with the contract documentation.
- SECTION J. The City of Somerville reserves the right to accept or reject any or all bids, to waive any minor informalities, to divide the award, to amend any specifications or to accept any portion of a bid, if the best interest of the City of Somerville would be served by so doing.

SECTION K. The City reserves the right to cancel a contract, if awarded bidder does not respond to all necessary documents and required signature forms within twenty (20) working days of receipt of contract.

SECTION L. The Vendor must certify that all employees to be provided have successfully completed at least ten (10) hours of OSHA approved training in Construction Safety and Health.

Signature: _____

Company: _____

By: _____

Title: _____

Date: _____

Telephone No: _____

Fax: _____

Email: _____

**CITY OF SOMERVILLE, MASSACHUSETTS
SOMERVILLE SCHOOL COMMITTEE
42 CROSS STREET
SOMERVILLE, MA 02145**

INVITATION FOR BIDS FOR

Repair of Refrigerators, Freezers and Refrigeration Exhaust Systems;

Bid #S2016-04

I. General Information and Bid Submission Requirements

Bid Delivery

All bids must be delivered to Somerville School Department, Office of the Finance Director, 42 Cross Street, Somerville, MA 02145.

An original copy of the bid should be submitted. Bids must be sealed and marked as follows: **“Bid for Repair of Refrigerators, Freezers and Refrigeration Exhaust Systems, Bid #S2016-04”, Date – February 17, 2016, Time - 2:00 p.m.**

All bids must include a non-collusion/tax compliance certificate, bid pricing sheet, reference form as provided in this IFB, and 5% bid surety in the amount of 5% of the estimated bid amount. A Bid bond, Certified Check, Treasurer’s Check, or Cashier’s Check made payable to the City must be submitted with each bid. Said bid guarantee will become the property of the City of Somerville if the proposal is accepted and the bidder either neglects or refuses to comply with the terms of the proposal. Bid guarantee will be returned within 30 days to all unsuccessful bidders.

Bid Signature

A bid must be signed as follows: 1) if the bidder is an individual, by her/him personally; 2) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the clerk/secretary of the corporation, and with the corporate seal affixed.

Time for Bid Acceptance

The contract will be awarded within 60 days after the bid opening. The time for award may be extended for up to 45 additional days by mutual agreement between the City of Somerville and the apparent lowest responsive and responsible bidder (or, for a contract requiring payment, the apparent highest responsive and responsible bidder.)

Bonding Requirements

A Payment Bond in the amount of 50% of the total contract price is required upon contract award.

The Bond must be issued by a surety company licensed to do business in Massachusetts.

Prevailing Wage Requirements

Bidders will be required to comply with the Prevailing Wage Laws, M.G.L. c. 149. The applicable prevailing wage rates are attached.

Notwithstanding anything to the contrary in Articles of the General Conditions (included in the Contract) the City may, in its sole discretion withhold payment from the General Contractor with respect to a given application for payment unless the City has in its possession payroll records that are complete, accurate, and current as of the date of said application for payment. Payment by the City on one or more occasions in the absence of the General Contractor's compliance with this section shall not constitute a waiver of the City's right to withhold payment for noncompliance on other occasions.

The General Contractor shall submit payroll information on a weekly basis in a format approved by the City (form attached) numbered in numerical sequence and signed by the Contractor (including forms: for weeks when the Contractor is not on the site, in which case there shall be a notation to the effect "no work this payroll period" and a date anticipated for resuming work). The General Contractor shall submit these forms to: The Finance Director of the School Department. **(N/A)**

The City will take an active role in reviewing and monitoring these payrolls weekly. If the City suspects any violations, the City will report them to the Attorney General's Fair Labor and Practices Division. The Attorney General's Office, after conducting an investigation and a hearing can order the bidder to halt work, if it finds prevailing wage violations. Within fifteen days after completion of its portion of the work the bidder must submit a Statement of Compliance with the prevailing wage law. The City reserves the right to conduct hearings on bids that are significantly below the average bid price submitted on a project, to make findings of fact, and determinations. Weekly payrolls are public records and the bidder shall make them available upon request. **(N/A)**

The Bidder is required to keep these records for a period of three years from the date of completion of this contract.

Changes and Addenda

If any changes are made to this IFB, an addendum will be issued. Addenda will be mailed or faxed to all bidders on record as having picked up the IFB. No changes may be made to the bid documents, by the Bidders; without written authorization and/or an addendum from the Finance Director.

Questions about the IFB

Questions concerning this invitation for bids must be submitted in writing to: Patricia Durette, Finance Director, School Department, at 8 Bonair Street, Somerville, MA 02145 by Tuesday, February 9, 2016. Questions may be delivered, mailed, faxed to 617-666-1130, or e-mailed to **pdurette@k12.somerville.ma.us**. Written responses will be mailed or faxed to all bidders on record as having picked up the IFB.

If any Bidders or proposers contact anyone outside of the School Department, for information about this proposal, the bid/proposal will be disqualified from the bidding process.

Modification or Withdrawal of Bids, Mistakes, and Minor Informalities

A bidder may correct, modify, or withdraw a bid by written notice received by the Somerville School Department prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No.____" to the address listed in part one of this section. Each modification must be numbered in sequence, and must reference the original IFB.

After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the City or fair competition. Minor informalities will be waived or the bidder will be allowed to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the mistake will be corrected to reflect the intended correct bid, and the bidder will be notified in writing; the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident.

Right to Cancel/Reject Bids

The Somerville School Department may cancel this IFB, or reject in whole or in part any and all bids, if the School Department determines that cancellation or rejection serves the best interests of the School Department.

Unbalanced Bids

The School Department reserves the right to reject unbalanced, front loaded, and conditional bids.

Bid Prices to Remain Firm

All bid prices submitted in response to this IFB must remain firm for 60 days following the bid opening.

Unforeseen Office Closure

If, at the time of the scheduled bid opening, the School Department is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the bid opening will be postponed until 2:00 p.m. on the next normal business day. Bids will be accepted until that date and time.

II. Purchase Description/Scope of Services

Contract Term Length and Renewal Options

The contract will remain in effect from March 1, 2016 to February 28, 2017 with two (2), one-year options to renew.

Price Submission

All prices must contain hourly rates as requested on the price submission page.

Contract Award

The School Department is awarding a one year contract for the period of March 1, 2016 to February 28, 2017, with two (2), one-year options to renew. This contract will cover the work listed for all School Foodservice Departments, including the Somerville High School Culinary Arts Program. Each department is responsible for ordering and paying for their own repairs/maintenance.

Estimated Quantities

The School Department cannot estimate the number of hours needed under this contract, since most of the work will be provided on an as needed basis. However, according to past usage, this contract may cost from \$5,000 per year, up to \$40,000 per year. These estimates are estimates only and not guaranteed.

Brand Name "Or Equal"

Any references to any brand name or proprietary product in the specifications shall require the acceptance of an equal or better brand. Samples may be requested before a final decision is made. The City has the right to make the final determination as to whether an alternate brand is equal to the brand specified.

Warranty

The bidder warrants that (1) the Supplies sold are merchantable, (2) that they are fit for the purpose for which they are being purchased, (3) that they are absent any latent defects and (4) that they are in conformity with any sample which may have been presented to the City.

The bidder guarantees that upon inspection, any defective or inferior Supplies shall be replaced without additional cost to the City. The Vendor will assume any additional cost accrued by the City due to the defective or inferior Supplies.

The bidder guarantees all Supplies for a period of one (1) year, or as otherwise specified herein.

Description of Services

Cancellation

The City reserves the right to cancel this contract at any time on any grounds, including the vendor's failure to comply with the specifications provided herein.

Laws and Regulations

The Bidding procedures shall be in accordance with M.G.L. c.149 as most recently amended and all other applicable laws. The contractor shall comply with all Federal, State and Local laws regulations and ordinances governing this type of work.

Sales Tax Exemption

Materials, equipment, and supplies for this project are exempt from sales tax in accordance with M.G.L. Chapter 64H, Section 6 (d). The City will furnish the successful bidder with its sales tax exemption number.

Specifications/Scope of Work

General

The contractor shall comply with all Federal, State, and Local Regulations and Ordinances governing the type of work detailed in these specifications

Awarded vendor will provide all on-call labor, equipment, materials, transportation and supervision needed for repairs and service to School Food Service refrigeration equipment, and exhaust systems located within various schools.

Scope of Services

These specifications include but are not limited to, the following types of equipment and controls in each facility, where applicable:

1. Refrigerator/Freezer Equipment:
Compressors, motors, pumps, condensers, refrigerants, evaporators, valves, belts, gauges, linkages, piping, and fittings.
2. Air Handling Equipment
Exhaust Fans, motors, bearings, belts, air handlers, dampers and filters.
3. Control Systems
Thermostats, air piping, relays, electric starters, switches, electric wiring, gauges, control valves, damper operators, air compressors, air dryers, and controllers.

Existing Conditions/Site(s) Visits

During the bidding period the City of Somerville, School Department, Department of Foodservices shall make available, all facilities, for all bidders to visit with designated personnel. Bidders will be responsible for all work under this contract whether they visit the facilities or not. Site Visit Dates will be: Wednesdays and Fridays between 12:00pm and 3:00pm. Contact the Foodservices Director, Lauren Mancini at 617-625-660 x6087 to schedule a visit.

Examination of Equipment and Premises

The contractor shall fully inform himself of the existing equipment and conditions at all locations. The contractor shall maintain a school by school equipment inventory list of the School Foodservice refrigeration equipment (including Culinary Arts). At the request of the School Foodservice director, the contractor shall provide copies of any equipment lists.

General Conditions

A. The contractor shall furnish labor, materials, parts components and equipment to service and repair refrigeration, and exhaust system equipment in the schools listed in these specifications.

B. The Foodservice Department requires only one technician per call. Additional technicians will be allowed only with the express permission of the Foodservice Director. Assistant services will be accepted only for approved additional service requests.

C. The Foodservice Department makes no provision for the payment of mileage, travel time, fuel surcharges or pick-up/delivery charges or any other charges. Bidder's normal business costs to be covered by the hourly rate proposed, except for parts.

Protection of Property

The contractor shall take all precautions to protect the property of the City from injury and shall be held responsible for all employees or any person or persons, instrument or device directly or indirectly employed by him. Any corresponding damages shall be replaced, repaired and paid for by the contractor to the satisfaction of the City of Somerville.

Use appropriate means necessary to protect materials before, during and after installation and to protect adjacent surfaces.

Quality of Workmanship

All work must be done in a thorough workmanlike manner by fully qualified skilled personnel. The contractor shall be fully qualified to do all work described in these specifications. The City of Somerville reserves the right to judge on the quality of workmanship of those bidding based either on work done for the City of Somerville in the past or on work done for companies and/or other cities. Contractor must submit with his bid three (3) references showing similar work performed.

Experience

The contractor shall have been established in the industrial refrigeration and exhaust systems repair service field for at least four (4) years.

Distance From City

The contractor shall be no more than one hour traveling distance away from the City of Somerville in order to provide the necessary services in an expeditious manner.

Repair

Examine the unit for causes, which may have led to the failure; repair not only the failed portion, but also rehabilitate any other elements which appear to be in need of maintenance.

Comply firstly with the servicing techniques required and/or recommended by the Manufacturer of the item and secondly with generally accepted repair practices for the class of items to which the unit belongs.

In particular, for any item still believed to be under warranty, conform exactly to the Manufacturer's requirements; advise the City of any recourse it may have with the original equipment manufacturer.

As a part of repair, check all field-adjustable settings and field-measurable tolerances. Reset these to original factory compliance; advise the City of any such settings/tolerances that cannot be repaired or for which the cost of repairs suggests that replacement unit be considered.

Replacement

Notify the Foodservices Director immediately upon initial examination of any unit that cannot be repaired or for which the cost of repairs suggests that a replacement unit be considered.

Furnish only a duplicate item from the original manufacturer or a first-quality similar item from an established manufacturer who maintains a dealer/service network or support in the Greater Boston Area.

Replacement units must be either an exact physical and functional equal or have only acceptable differences from the original – Coordinate with the Foodservices Director in this case before providing the replacement unit.

Repair and Replacement Materials

All repair and replacement materials used shall be first quality with preference given to replacement parts as manufactured by the original equipment manufacturer (OEM); use these parts whenever available and always when a manufacturer's warranty, still in effect, would otherwise be voided.

In the event new major parts or components costing over five hundred dollars (\$500.00) should be required, the Contractor shall advise the Foodservices Director and obtain the Director's approval prior to performing said work. The Foodservice Director may request a separate job quote for such work. In an emergency situation, the Foodservices Director's approval may be obtained by telephone.

The Foodservice Director may, at her option, request quotations for the purchase of major new refrigerator/freezer components and/or new or replacement pieces of equipment from the vendor that may be installed and/or purchased within the scope of this contract.

The City reserves the right to purchase items costing over fifteen hundred dollars (\$1,500.00) direct, if it is in its best interest to do so.

Service

The contractor shall have a certified HVAC or Refrigeration technician properly licensed to perform services as defined in the specifications. All services shall be available during regular hours and emergency hours. The service staff shall consist of at least two other service technicians who are experienced in the repair of foodservice type refrigerators, freezers, and exhaust systems. Awarded vendor will have to provide a certified copy of licensed HVAC technician or refrigeration technician's license.

Equipment & Major Repair/Replacement

The Contractor shall submit two copies of Maintenance and Operation Manuals for any new equipment installed. Deliver one to location of equipment and one to Foodservice Director.

Guarantee

All labor, materials, and replacement furnished under the contract shall be fully guaranteed including the cost of removal and reinstallation (if part of the work order) for one (1) year. In the event of failure, provide warranty service immediately upon notification.

Locations

See Attachment A.

Other Locations/Additional Sites/Other Work

Other locations/sites may be added from time to time to provide services for school food service equipment on loan to client programs, and institutions, as needed. Other work not listed above such as evacuating Freon, moving equipment, etc. may also be requested at the discretion of the Foodservice Director.

City Departments, not included in this contract, shall be extended the privilege of participating in this contract at the awarded bid prices.

The refrigerators, freezers and exhaust hoods at the Culinary Arts Training Program, operated by the Somerville School Department and housed at Somerville High School, 81 Highland Avenue, Somerville, shall be able to purchase services under the terms of this contract. These services shall be invoiced and billed separately. Bills and statements for the Culinary Arts Training Program shall be sent to:

Somerville School Department
Culinary Arts Training Program
c/o Finance Office
8 Bonair Street
Somerville, MA 02145

Invoices

Invoices, one for each building, must be mailed within five days after each service call has been completed. All invoices must be typewritten and are to be mailed to:

Somerville School Department
Foodservice Director
C/o Finance Office
8 Bonair Street
Somerville, MA 02145

Each invoice must contain the name of the school where service was rendered, Refrigeration, Freezer Model and Model #, time spent in servicing equipment, parts used and appropriate contract price for parts. A duplicate copy of each invoice must be provided by vendor.

Living Wage Ordinance Form

The awarded vendor will be required to comply with the City of Somerville's Living Wage Ordinance. Attached is a compliance form, which must be signed and returned with bid. A complete copy of the ordinance may be obtained by request.

Bid Sheet Information

Prices shall be given in two parts. The first area is labor charges per hour. Regular time is considered to be from 8:00 a.m. to 4:00 p.m., Monday through Friday; and Emergency Time is to be all other hours (evenings, weekends, holidays, etc.) other than regular time.

The second area is parts and materials. This shall be given in any of the following three ways:

- A. List prices = Net Price
- B. List price - _____% discount = Net Price
- C. List price + _____% = Net Price

The contractor should note that he will be required at the time of actual purchase of parts and materials to show proof that list price given is current manufacturer's list price and any catalogs and price sheets must be available for inspection by the School Department.

Estimates and Surveys

The contractor shall, as required, furnish estimates and survey proposed work at no cost to the City.

References

Please include on reference sheet a minimum of three references for whom similar maintenance service has been provided, preferably other Municipalities. Include all information as requested.

Insurance

The contractor must provide the following insurance certificates before the contract can be fully executed:

General Liability:	\$1,000,000
Automobile:	\$100,000 - \$200,000
Workers' Compensation:	As required by General Law

(See Insurance Specifications in sample contract attached.)

Service Delivery

All services will be conducted on-site at the location listed on the purchase order. Services should be coordinated with the Foodservice Director.

Bid Documentation

Please return the entire bid intact and in the page order that you received the document. Do not separate pages or remove pages. If you are unable to comply with a specification and/or instruction, please leave the item blank or mark "N/A" for not applicable.

Any question regarding this bid must be submitted in writing to the School Department no later than seven (7) calendar days prior to the scheduled bid opening. A written response will be faxed to all vendors of record who have received a bid package. Questions should be sent to: Patricia Durette, Finance Director, Somerville School Department, 8 Bonair Street, Somerville, MA 02145 or emailed to pdurette@k12.somerville.ma.us.

III. Quality Requirements

Please respond to the following questions. A negative response to any other following questions will automatically disqualify the vendor.

	Yes	No
The Contractor shall have been established in the industrial refrigeration and air conditioning repair service field for at least four (4) years.		
The Contractor must have a current state Refrigeration Contractor's License and will present a copy along with bid.		
The contractor will respond within 24 hours of a service call from the Foodservice Director during normal business hours.		
The Contractor will respond within 8 hours of an Emergency Service call, outside of normal business hours.		

IV. References

REFERENCE FORM

Bidder: _____

IFB Title: Repair of Refrigerators, Freezers and Refrigeration Exhaust Systems.

Bidder must provide three references where similar maintenance service has been provided. Preferably from other Municipalities:

1. Reference: _____ Contact: _____

Address: _____ Phone: _____

_____ Fax: _____

Description and date(s) of services provided: _____

2. Reference: _____ Contact: _____

Address: _____ Phone: _____

_____ Fax: _____

Description and date(s) of services provided: _____

3. Reference: _____ Contact: _____

Address: _____ Phone: _____

_____ Fax: _____

Description and date(s) of services provided: _____

V. Bid Pricing Sheet

Vendors to bid on the prices for parts and labor for providing needed repairs and service on the City of Somerville Refrigeration, and Kitchen Exhaust Hood Systems equipment within the various schools and municipal buildings as per specifications

I. Labor

A. Mechanics/Refrigeration Technicians	3/1/16 to 2/28/17	Opt. Yr. 1 3/1/17 to 2/28/18	Opt. Yr. 2 3/1/18 to 2/28/19
1. Rate per hour 8:00 A.M. to 4:00 P.M. Monday through Friday			
2. Emergency Rate Per Hour			
B. Helpers	3/1/16 to 2/28/17	Opt. Yr. 1 3/1/17 to 2/28/18	Opt. Yr. 2 3/1/18 to 2/28/19
1. Rate per hour 8:00 A.M. to 4:00 P.M. Monday through Friday			
2. Emergency Rate Per Hour			

II. Parts

Parts and materials as required shall be sold to the City of Somerville in one of the following three ways:	
1. List Price = Net Price	
2. List Price = % discount = Net Price	
3. List Price + ____% = Net Price	
Please list, on a separate sheet if necessary, those foodservice equipment manufacturers and companies for which you are the authorized service agent.	

Name of Company: _____

Submitted By: _____

Signature: _____

Address: _____

Phone: _____ Fax: _____

Date: _____ Email: _____

ADDENDA #1_____ #2_____ #3_____ #4_____ ACKNOWLEDGED

Failure to acknowledge receipt of addenda may result in your bid being rejected.

VI. Rule for Award

The contract will be awarded to the responsible and eligible bidder offering the lowest mechanics/refrigeration technicians hourly rate (See 1A above). In the event of a tie, the award will be made to the vendor offering the lowest helpers hourly rate (See 1B above). If a tie still exists, the vendor offering the best net price for purchased parts and materials will be awarded the bid.

**CITY OF SOMERVILLE
SCHOOL COMMITTEE
SIGNATURE FORM**

NAME OF COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ DATE: _____

SIGNATURE OF AUTHORIZED CONTRACTING OFFICIAL: _____

NAME: _____ TITLE: _____

RESIDENCE: _____

IF COMPANY IS A PARTNERSHIP:

FULL NAME AND RESIDENCE OF EACH PARTNER:

IF COMPANY IS A CORPORATION:

THE CORPORATE NAME IS: _____

THE CORPORATION IS ORGANIZED UNDER THE LAWS OF: _____

THE PRESIDENT IS: _____

THE TREASURER IS: _____

THE CLERK/SECRETARY IS: _____

NAME OF CORPORATION THAT WILL APPEAR ON A POTENTIAL CONTRACTUAL
AGREEMENT IF DIFFERS FROM ABOVE:

NAME AND TITLE OF PERSON WHO WILL BE RESPONSIBLE FOR THE SIGNING OF A
POTENTIAL CONTRACTUAL AGREEMENT IF DIFFERS FROM ABOVE:

NAME: _____ TITLE: _____

NAME OF CLERK/SECRETARY WHO WILL ALSO BE SIGNING FOR A POTENTIAL
CONTRACTUAL AGREEMENT IF DIFFERS FROM ABOVE:

Form: _____
Contract Number: _____

CITY OF SOMERVILLE

Rev. 08/01/12



Non-Collusion Form and Tax Compliance Certification

Instructions: Complete each part of this two-part form and sign and date where indicated below.

A. NON-COLLUSION FORM

I, the undersigned, hereby certify under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person.

As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Signature: _____
(Individual Submitted Bid or Proposal)
Duly Authorized

Name of Business or Entity: _____

Date: _____

B. TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support, as well as paid all contributions and payments in lieu of contributions pursuant to MGL 151A, §19A (b).

Signature: _____
(Duly Authorized Representative of Vendor)

Name of Business or Entity: _____

Social Security Number or Federal Tax ID#: _____

Date: _____



Certificate of Authority (Corporations Only)

Instructions: Complete this form and sign and date where indicated below.

1. I hereby certify that I, the undersigned, am the duly elected Clerk/Secretary of

(Insert Full Name of Corporation)

2. I hereby certify that the following individual _____
(Insert the Name of Officer who Signed the Contract and Bonds)

is the duly elected _____ of said Corporation.
(Insert the Title of the Officer in Line 2)

3. I hereby certify that on _____
(Insert Date: Must be on or before Date Officer Signed Contract/Bonds)

at a duly authorized meeting of the Board of Directors of said corporation, at which a quorum was present, it was voted that

(Insert Name of Officer from Line 2) (Insert Title of Officer from Line 2)

of this corporation be and hereby is authorized to make, enter into, execute, and deliver contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

4. **ATTEST:**

Signature: _____
(Clerk or Secretary)

AFFIX CORPORATE SEAL HERE

Printed Name: _____

Printed Title: _____

Date: _____

(Date Must Be on or after Date Officer Signed Contract/Bonds)



SOMERVILLE LIVING WAGE ORDINANCE CERTIFICATION FORM
CITY OF SOMERVILLE CODE OF ORDINANCES SECTION 2-397 et seq¹.

Instructions: This form shall be included in all Invitations for Bids and Requests for Proposals which involve the furnishing of labor, time or effort (with no end product other than reports) by vendors contracting or subcontracting with the City of Somerville, where the contract price meets or exceeds the following dollar threshold: **\$10,000**. If the undersigned is selected, this form will be attached to the contract or subcontract and the certifications made herein shall be incorporated as part of such contract or subcontract. **Complete this form and sign and date where indicated below on page 2.**

Purpose: The purpose of this form is to ensure that such vendors pay a “Living Wage” (defined below) to all covered employees (i.e., all employees except individuals in a city, state or federally funded youth program). In the case of bids, the City will award the contract to the lowest responsive and responsible bidder paying a Living Wage. In the case of RFP’s, the City will select the most advantageous proposal from a responsive and responsible offeror paying a Living Wage. In neither case, however, shall the City be under any obligation to select a bid or proposal that exceeds the funds available for the contract.

Definition of “Living Wage”: For this contract or subcontract, as of **7/1/2015** “Living Wage” shall be deemed to be an hourly wage of no less than **\$12.24** per hour. From time to time, the Living Wage may be upwardly adjusted and amendments, if any, to the contract or subcontract may require the payment of a higher hourly rate if a higher rate is then in effect.

CERTIFICATIONS

1. The undersigned shall pay no less than the Living Wage to all covered employees who directly expend their time on the contract or subcontract with the City of Somerville.
2. The undersigned shall post a notice, (copy enclosed), to be furnished by the contracting City Department, informing covered employees of the protections and obligations provided for in the Somerville Living Wage Ordinance, and that for assistance and information, including copies of the Ordinance, employees should contact the contracting City Department. Such notice shall be posted in each location where services are performed by covered employees, in a conspicuous place where notices to employees are customarily posted.
3. The undersigned shall maintain payrolls for all covered employees and basic records relating hereto and shall preserve them for a period of three years. The records shall contain the name and

¹Copies of the Ordinance are available upon request to the Purchasing Department.

Form:____
Contract Number:_____

CITY OF SOMERVILLE

Rev. 08/01/12

security returns, and evidence of payment thereof and such other data as may be required by the contracting City Department from time to time.

4. The undersigned shall submit payroll records to the City upon request and, if the City receives information of possible noncompliance with the provisions the Somerville Living Wage Ordinance, the undersigned shall permit City representatives to observe work being performed at the work site, to interview employees, and to examine the books and records relating to the payrolls being investigated to determine payment of wages.

5. The undersigned shall not fund wage increases required by the Somerville Living Wage Ordinance by reducing the health insurance benefits of any of its employees.

6. The undersigned agrees that the penalties and relief set forth in the Somerville Living Wage Ordinance shall be in addition to the rights and remedies set forth in the contract and/or subcontract.

CERTIFIED BY:

Signature: _____
(Duly Authorized Representative of Vendor)

Title: _____

Name of Vendor:_____

Date: _____

INSTRUCTIONS: PLEASE POST

**NOTICE TO ALL EMPLOYEES
REGARDING PAYMENT OF LIVING WAGE**

Under the Somerville, Massachusetts' Living Wage Ordinance (Ordinance No. 1999-1), any person or entity who has entered into a contract with the City of Somerville is required to pay its employees who are involved in providing services to the City of Somerville no less than a "Living Wage".

The Living Wage as of _____ is _____ per hour. The only employees who are not covered by the Living Wage Ordinance are individuals in a Youth Program. "Youth Program" as defined in the Ordinance, "means any city, state or federally funded program which employs youth, as defined by city, state or federal guidelines, during the summer, or as part of a school to work program, or in any other related seasonal or part-time program."

For assistance and information regarding the protections and obligations provided for in the Living Wage Ordinance and/or a copy of the Living Wage Ordinance, all employees should contact the City of Somerville's Purchasing Department directly.

**FORM FOR GENERAL BID
FOR CONSTRUCTION CONTRACT**

To the Awarding Authority

- A. The undersigned proposes to furnish all labor and materials required for:

(project)

(city or town)

in accordance with the accompanying plans and specifications prepared by

(name of Architect)

specified below, subject to additions and deductions according to the terms of the specifications.

- B. This bid includes addenda numbered _____

- C. This proposed contract price is _____

(total bid in words)

\$ _____.

(total bid in figures)

- D. If there is attached a "Bid Form for Alternates", the Bidder shall fill in prices for each alternate. All blank spaces must be filled in. The omission of any item will result in the rejection of a bid. The price of each alternate shall include its pro rata share of overhead and profit;
- E. The Undersigned Bidder agrees that, if it is selected as general contractor, it will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the Awarding Authority, execute a contract in accordance with the terms of this bid and furnish a performance bond and also a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the Awarding Authority and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.
- F. The Undersigned Bidder hereby certifies that it is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the Project and that it will comply fully with all laws and regulations applicable to this Award, including

applicable provisions if MGL Chapter 149, ss.44A - J and MGL Chapter 30, ss. 39M et seq.

G. The Undersigned Bidder further certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the work "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

H. The Undersigned Bidder agrees to comply with federal and state equal opportunity and labor requirements, including payment of prevailing wages.

I. The Undersigned Bidder certifies that it is a (Sole Proprietorship, General Partnership, Limited Partnership, Corporation, Trust, Joint Venture) _____, that the Federal Employer Identification Number (EIN) of the Bidder is # _____, and that it is in compliance with all federal, state, and local laws regarding taxation, and that:

1) if a Sole Proprietorship, it conducts business under the name _____, and that a D/B/A Certificate has been filed with the Clerk of the City of Somerville, and that the residential address of the sole proprietor is _____, and that the Bidder has been conducting business under that name for _____ years.

2) if a General Partnership, then name of the General Partnership is _____, the General partnership has been doing business under that name for _____ years, and the names and residential addresses of the General Partners are _____

3) if a Limited Partnership, the name of the Limited partnership is _____, the Limited Partnership has been doing business under that name for _____ years, the names and residential addresses of the General Partners of the Limited Partnership are _____

and, a Certificate of Limited Partnership (obtainable from the Secretary of the Commonwealth) is submitted with this Form for Bid.

4) If a Corporation, the Bidder is incorporated in the State of _____, the name of the Corporation is _____

The Corporation has been doing business under that name for _____ years, the names and residential addresses of its officers are:

President: _____,

Treasurer: _____,

Clerk: _____,

and a current Certificate of Good Standing, (obtainable from the Secretary of the Commonwealth for Massachusetts corporations and non-Massachusetts corporations which are properly registered as foreign corporations doing business in the Commonwealth), is submitted with this Form for Bid.

5) if a Joint Venture, the name of the Joint Venture is _____,

the Joint Venture has been operating under that name for _____ years, the names and business addresses of the Joint Venturers are:

the above-requested information regarding individual business entities is furnished for each joint venture as follows:

and that a copy of the joint venture agreement is furnished with this Form for Bid.

- J. The Undersigned Bidder certifies under penalties of perjury that the Bidder is not presently debarred from doing federal or state public construction work, that the Bidder has not had its low bid rejected by any municipality in the previous two years, except _____, in which case the reasons for rejection were as follows:

- K. The Undersigned Bidder certifies that the following three projects were completed during the previous six years and may be contacted by the Awarding Authority as references:

<u>Name of Town & Project</u>	<u>\$Amount</u>	<u>Name and Tel. No. of Contact</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

- L. The Undersigned Bidder understands that the contractor and subcontractors will be required to pay prevailing wages to laborers and mechanics, and that if the Undersigned's bid is significantly below the average bid, the Awarding Authority may require the Bidder to substantiate that the bid is based on payment of wages at prevailing rates.

M. An itemized Schedule of Values is attached with this Form for Bid.

Executed this _____ day of _____, 2013.

On behalf of _____
(Undersigned Bidder Name)

(Business Address) and (Telephone)

By: _____
(Name and Address of Person Signing Bid)

(Title of Person Signing bid)

CITY OF SOMERVILLE/COUNTY OF MIDDLESEX

SOMERVILLE SCHOOL DEPARTMENT

CONTRACTOR CERTIFICATION

To the official, acting in behalf of the City of Somerville/County of Middlesex:

The undersigned agrees to furnish HVAC Services and to perform all work required in accordance with the terms of the accompanying contract documents, including the general conditions.

If the business is conducted under any title other than the real name of the owner, state the time when, and place where, the certificate required by General Laws, c. 110, 55, was filed:

The Federal Identification Number for the contractor (the number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941 is: _____

Contractor: _____

By: _____

Sign here

Title: _____

Business Address: _____

City

State

Zip

NOTE: This statement must bear the written signature of the contractor. If the contractor is an individual doing business under a name other than his own name this statement must so state, giving the address of the individual. If the contractor is a partnership this statement must be signed by a general partner designated as such.

WEEKLY PAYROLL RECORDS REPORT & STATEMENT OF COMPLIANCE

In accordance with Massachusetts General Law c. 149, §27B, a true and accurate record must be kept of all persons employed on the public works project for which the enclosed rates have been provided. A Payroll Form has been printed on the reverse of this page and includes all the information required to be kept by law. Every contractor or subcontractor is required to keep these records and preserve them for a period of three years from the date of completion of the contract.

In addition, every contractor and subcontractor is required to submit a copy of their weekly payroll records to the awarding authority. For every week in which an apprentice is employed, a photocopy of the apprentice's identification card must be attached to the payroll report. Once collected, the awarding authority is also required to preserve those records for three years.

In addition, each such contractor, subcontractor, or public body shall furnish to the awarding authority directly, within fifteen days after completion of its portion of the work a statement, executed by the contractor, subcontractor or public body who supervises the payment of wages, in the following form:

STATEMENT OF COMPLIANCE	
_____, 20_____	
I, _____,	
(Name of signatory party)	(Title)
do hereby state:	
That I pay or supervise the payment of the persons employed by	
_____	on the _____
(Contractor, subcontractor or public body)	(Building or project)
and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of sections twenty-six and twenty-seven of chapter one hundred and forty nine of the General Laws.	
Signature _____	
Title _____	

DIVISION OF OCCUPATIONAL SAFETY, 19 STANIFORD STREET, 2nd FLOOR, BOSTON, MA 02114

CERTIFICATE OF GOOD STANDING

TO: VENDOR

FROM: SCHOOL DEPARTMENT

RE: **CURRENT GOOD STANDING FORM**

The **AWARDED VENDOR** must comply with our request for a **CURRENT “CERTIFICATE OF GOOD STANDING”**.

If you require information on how to obtain the Good Standing Certificate or Certificate of Registration (Foreign Corporations) from the Commonwealth of Massachusetts, please call the **Secretary of State’s Office, Order Room for Corporations** at **(617) 727-2850** (Press #1) located at One Ashburton Place, 17th Floor, Boston, MA or you may access their web site at: www.MA.GOV/SEC/COR.

If your company is incorporated outside of Massachusetts and therefore is a “foreign corporation”, but is registered to do business in Massachusetts, please comply with our request for the Certificate of Registration from the Commonwealth of Massachusetts. If your company is a “foreign corporation”, but is not registered to do business in Massachusetts, please provide the Good Standing Certificate from your state of incorporation.

Please note that without the above certificate(s), the City of Somerville, School Department cannot execute your contract.

IMPORTANT NOTICE

Requests for Certificates in Good Standing by mail may take a substantial amount of time. A certificate may be obtained immediately in person at the Secretary’s Office at the address above. Also, at this time, the Secretary of State’s Office may not have your current annual report recorded. If this is the case, and you are therefore unable to obtain the Certificate of Good Standing, please forward a copy of your original Certificate of Good Standing to the School Department, Finance Office.

Thank you,

Patricia Durette,
Finance Director

SAMPLE CONTRACT

**OWNER-CONTRACTOR PUBLIC CONSTRUCTION AGREEMENT
CITY OF SOMERVILLE**

PURCHASING DEPARTMENT FOR end user department

AGREEMENT made this 1st day of month, year, by and between the City of Somerville, a Massachusetts municipal corporation, acting by and through its School Department, 42 Cross Street, Somerville, MA 02145 (referred to variously in the Contract Documents as "City", "Owner", "Awarding Authority", and "School") and the following General Contractor (referred to in the Contract Documents as "Contractor" or "General Contractor"):

CONTRACTOR

Name: vendor name
Address: vendor address, city, MA zip

PROJECT

Name: project description
Location: project location

Brief Description: further project description

ARCHITECT: n/a
Address: _____

LANDSCAPE ARCHITECT

Name: n/a
Address: _____

ENGINEER

Name: n/a
Address: _____

(The Architect, Landscape Architect, or Engineer is described herein as the "Design Professional".)

THIS CONTRACT IS A

- ☐ Public Works Contract under \$10,000
- ☐ Public Building Contract under \$10,000, subject to the price quote requirements of Chapter 149 of the General Laws
- ☐ Public Building Contract estimated to cost more than \$10,000, but less than \$25,000, subject to the written response requirements of Chapter 149 of the General Laws
- ☐ Public Works Contract estimated to cost more than \$10,000 thereby subject to the bidding requirements of Mass. Gen. Laws, Chapter 30, Section 39M
- ☒ Public Building Contract estimated to cost more than \$25,000, but less than \$100,000, subject to the bidding requirements of Mass. Gen. Laws, Chapter 30, Section 39M
- ☐ Public Building Contract estimated to cost more than \$100,000 subject to the bidding requirements of Mass. Gen. Laws, Chapter 149, Section 44A.

(Chapter 149 and Chapter 30 contain interrelated provisions. When a provision applies only to Chapter 149 s. 44A contracts or only to Chapter 30, s. 39M contracts, it is so noted herein. Otherwise, any section of Chapter 30 or Chapter 149 cited in this contract shall be deemed to apply to both types of contracts.)

Section 1: CONTRACT DOCUMENTS.

The Contract Documents consist of the Owner-Contractor Agreement, Advertisement, Bidding Documents, Technical Specifications, Drawings, General Conditions, Supplementary Conditions, and Addenda issued prior to execution of this Contract, and Modifications agreed to in writing after the execution of this Contract. The following Appendices are attached hereto and are hereby incorporated by reference.

- ☐ Appendix A - Advertisement; Notice to Bidders;
- ☐ Appendix B - Bid Documents - Contractor's Bid
- ☐ Appendix C - Scope of Services - includes a brief description of the project and the Plans and Technical Specifications (Plans on File)
- ☐ Appendix D - Insurance Requirements with Contractor's Insurance Certificate(s)
- ☐ Appendix E - General Conditions
- ☐ Appendix F - Wage Rates; Living Wage Ordinance form
- ☐ Appendix G - Performance Bond and Payment Bond, if contract is over \$2,000

The Contract Documents represent the entire Contract between the parties hereto and supersede prior negotiations, representations, or Contracts, whether written or oral.

Section 2: THE WORK.

The Contractor shall execute all work described in the Contract Documents, except to the extent that such work is specifically indicated in the Contract Documents to be the responsibility of others. In accordance with Chapter 30, section 39I of the General Laws, the contractor shall perform all of work in conformity with the plans and specifications included herein as Appendix A. No willful or substantial deviation from such plans and specifications shall be made unless authorized in writing by the Commissioner of Public Works, which authorization shall be confirmed by written change order within thirty days.

Section 3: PROJECT DATES

(a) Commencement: The Date of Commencement shall be stipulated by a written Notice to Proceed given by the City to the Contractor.

(b) Substantial Completion: The Contractor shall achieve substantial completion of the work no later than scheduled in the bid documents or date after the Date of Commencement, time being of the essence. For good cause shown, the Commissioner of Public Works may, in his sole discretion, extend the date of substantial completion by written change order.

(c) Damages for Delay. The Contractor and the Contractor's surety shall be liable for and shall pay the City the sum of \$100.00 per calendar day, as liquidated damages, for each calendar day of delay until the work is substantially completed or, in the case of the portion of the work, for each calendar day of delay until the portion of the work is substantially completed. Substantial Completion shall mean either a) that the work, or portion of the work, has been completed, except for work having a contract price of less than one percent (1%) of the then adjusted total contract price; or b) that substantially all of the work has been completed and opened to public use, except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work.

(d) Suspension of the Work/Excusable Delays. If the City is required to suspend the work as a result of a request from the Office of the Attorney General in connection with a bid protest or an injunction, the Contractor shall not have a claim for damages, but the City shall extend the date of substantial completion for a period of time commensurate with the period of the suspension, and the liquidated damages clause shall not take effect until the extended date of substantial completion. If any of the following occurrences causes a delay in the work, the Contractor shall immediately notify Department in writing. If, upon investigation, the City finds that the delay is excusable, the City shall extend the date of substantial completion for a period of time commensurate with the period of the excusable delay, and the liquidated damages clause shall not take effect until the extended date of substantial completion:

(1) any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency;

(2) delays which are caused by the City and which are not occasioned by the Contractor's failure to supply Department or its design professional with progress schedules, documents, samples, and the like, in a timely manner;

(3) causes not reasonably foreseeable by the parties to this Contract, which are beyond the reasonable control of the Contractor, such as blizzards, floods, hurricanes, tornadoes, and strikes;

(4) any delay of any subcontractor resulting from paragraphs (1), (2), or (3);

Section 4. CONTRACT SUM

The contract sum shall be \$contract amount. The contract sum may be increased or decreased by change order, as quantities which have been estimated in the bid documents become known, or as other additions or deletions to the work are made, or if the work is interrupted or suspended by the City, all as set forth herein.

Section 5. CHANGES IN THE CONTRACT

(2) Suspension, Delay, or Interruption due to order of Awarding Authority.

(1) The Awarding Authority may order the General Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Awarding Authority; provided, however, that if there is a suspension, delay, or interruption for fifteen days or more or due to a failure of the Awarding Authority to act within the time specified in this contract, the Awarding Authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the General Contractor on such increase; and provided further, that the Awarding Authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption, or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

(2) The General Contractor must submit the amount of a claim under provision (1) to the Awarding Authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the Awarding Authority shall not approve any costs in the claim incurred more than twenty days before the General Contractor notified the Awarding Authority in writing of the act or failure to act involved in the claim.

(3) A subcontractor shall have the same rights against the General Contractor for payment for an increase in the cost of its performance as provisions (1) and (2) give the General Contractor against the Awarding Authority, but nothing in provisions (1) and (2) shall in any way change, modify or alter any other rights which the General Contractor or the subcontractor may have against each other.

(b) Change Orders. No willful and substantial deviation from the plans and specifications shall be made unless authorized in writing by the Awarding Authority or by the Design Professional in charge of the work who is duly authorized by the Awarding Authority to approve such deviations. In order to avoid delays in the prosecution of the work required by the

contract, such deviation from the plans and specifications may be authorized by a written order of the Awarding Authority or Design Professional so authorized, to be confirmed at a later time by a written Change Order, signed under penalties of perjury, using AIA Document G701 (or its equivalent). The Change Order shall include the following: (1) if such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefore; (2) that the specified deviation does not materially injure the project as a whole; (3) that either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment [increase or decrease as the case may be] has been agreed upon between the Contracting Agency and the General Contractor and the amount in dollars of such adjustment; and (4) that the deviation is in the best interest of the Contracting Authority. The Change Order shall also indicate whether or not the date of substantial completion has been extended. The equitable adjustment in price shall be determined by the unit prices, if any, in the General Contractor's bid; otherwise, it shall be a number which is agreed to by both parties as a fair adjustment and which can be itemized and substantiated to the reasonable satisfaction of the Contracting Authority. Where increases and decreases to the Contract Sum are included in one Change Order, the negotiated allowance for overhead and profit shall be calculated on the basis of the net increase, if any.

(c) Differing Subsurface or Latent Physical Conditions. In accordance with Chapter 30, section 39N of the General Laws, if, during the progress of the work, the Contractor or the Awarding Authority discovers that the actual physical subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents, either the Contractor or the Contracting [Awarding] Authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the Contracting Authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the Contracting Authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

Section 6. PAYMENTS TO THE CONTRACTOR

(a) Progress Payments. The Contractor may submit requests for progress payments (hereafter, "Periodic Estimates") for work completed during the preceding month and for materials not incorporated in the work, but delivered and suitably stored at the site (or some other location agreed upon in writing). The Contractor's progress schedule and schedule of values, as modified by agreement of the parties, may be used by the City as a basis for reviewing the Contractor's Periodic Estimates. In the case of contracts for construction, reconstruction, alteration, remodeling, repair, or demolition of a public building, where the amount is more than two thousand dollars, the Contractor's Periodic Estimate shall contain a separate item for each filed sub-trade and sub-sub-trade, and a column listing the amount paid

to each subcontractor and sub-subcontractor as of the date the periodic estimate is filed, as required by Chapter 30, Section 39K, of the General Laws.

(1) Time for Payment. In the case of contracts for construction, reconstruction, alteration, remodeling, repair or demolition of a public building, where the amount is more than two thousand dollars, the City shall, in accordance with Chapter 30, Section 39K, of the General Laws, make payment within fifteen days of receipt of the Contractor's Periodic Estimate; provided however, that the City may, within seven days of receipt of an estimate which is not in the required form or which is arithmetically incorrect, return the incorrect estimate to the Contractor for correction, whereupon the date of receipt shall be the date of receipt of the corrected Periodic Estimate. For all other construction contracts, progress payments are governed by Chapter 30, Section 39G of the General Laws, and the City is required to make payment within thirty-five days of receipt of a Periodic Estimate.

(2) Retainage prior to Substantial Completion. In all construction contracts, the City may hold back a retainage of up to five percent of each progress payment to ensure satisfactory completion of the work. In addition, the City may withhold any amounts in dispute, including disputed change orders and direct payments owed to subcontractors pursuant to Chapter 30, Section 39F of the General Laws.

(b) Payment upon Substantial Completion. In the case of contracts for construction, reconstruction, alteration, repair, remodeling, or demolition of a public building, where the amount is more than \$2,000, Chapter 30, Section 39K, of the General Laws governs payment upon substantial completion. For all other contracts, Chapter 30, Section 39F of the General Laws governs payment upon substantial completion.

(1) Definition of Substantial Completion. Substantial Completion shall mean either a) that the work, or portion of the work, has been completed, except for work having a contract price of less than one percent (1%) of the then adjusted total contract price; or b) that substantially all of the work has been completed and opened to public use, except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work.

(2) Certificate of Substantial Completion. The Contractor shall give written notice to the City when the Contractor is of the opinion that the work has been substantially completed. Within twenty-one days of receipt of such notice, provided there is no dispute as to whether the work has been substantially completed, a Certificate of Substantial Completion signed by the City's Design Professional, or a written Declaration of Substantial Completion signed by the Executive Director of Mayor's Office of Strategic Planning and Community Development (on AIA form # G701 or its equivalent) shall be given to the Contractor. The date of such Certificate or Declaration shall be the Effective Date of Substantial Completion, subject to the provisions of Chapter 30, Section 39J, of the General Laws. If the City does not agree that the work has been substantially completed, the City or the City's Design Professional shall, within the twenty-one day period, present the Contractor with a written, itemized list of incomplete or unsatisfactory work items sufficient to demonstrate that the work has not been substantially completed. If the City fails to respond within the twenty-one day period, the date of the Contractor's notification of substantial completion shall become the "Effective Date of Substantial Completion". Within fifteen days after the effective date of the City's declaration of substantial completion, the City shall send to the Contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items and, unless delayed by causes beyond his control, the Contractor shall complete all such work items within forty-five

days after receipt of said list or before the date of substantial completion in the contract, whichever is later. If the Contractor fails to complete such work within such time, the City may send the Contractor a notice in writing by certified mail, return receipt requested, instructing the Contractor that if the work is not completed with seven days after receipt of the notice, the contract will be terminated and the City will complete the incomplete or unsatisfactory work items and charge the cost of the same to the Contractor and the Contractor's sureties.

(3) Retainage after Substantial Completion. Within sixty-five days after the Effective Date of Substantial Completion, the City shall pay the Contractor all but one percent retainage, minus: a) the amount of any disputed work item; and b) five (5) percent of the value of plant materials in the ground; and c) the City's estimated cost of completing all incomplete and unsatisfactory work items. The City shall also deduct an amount equal to the sum of all demands for direct payment filed by subcontractors and not yet paid to subcontractors or deposited in joint accounts pursuant to Chapter 30, Section 39F of the General Laws. The five (5) percent retainage of the value of all plant materials in the ground shall be withheld by the City until final acceptance of such plant materials at the end of the guarantee period.

(c) Final Payment. The City shall make final payment to the Contractor within thirty days of completion of the work and submission of all documentation required.

IF FORMS FOR WAGE CERTIFICATIONS AND OTHER DOCUMENTATION
ARE SUPPLIED BY THE CITY TO THE CONTRACTOR, THE CONTRACTOR
SHALL SUBMIT DOCUMENTATION ON SUCH FORMS.

(d) Interest. If the City fails to pay the Contractor within the time periods mandated by statute, the City shall pay interest to the Contractor in accordance with Chapter 30, Sections 39G and 39K, whichever is applicable.

Section 7. PAYMENT OF SUBCONTRACTORS.

In accordance with Chapter 30, Section 39F of the General Laws, the subparagraphs a) through h) of this section shall be binding on contracts awarded pursuant to Chapter 30, Section 39M of the General Laws, and paragraphs a) through i) shall be binding on contracts awarded pursuant to Chapter 149, Section 44A of the General Laws:

(a) Immediately after the Contractor receives payment on account of a periodic estimate, the Contractor shall pay each subcontractor the amount paid for labor performed and materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor to the Contractor.

(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the City as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the City shall pay that amount to the Contractor. The Contractor shall immediately pay to the subcontractor the full amount received from the City less any amount specified in any court proceeding barring such payment and also less any amount claimed due from the subcontractor by the Contractor.

(c) Each payment made by the City to the Contractor pursuant to subparagraphs a) and b) of this section for the labor performed and materials furnished by a subcontractor shall be made to the Contractor for the account of that subcontractor; and the City shall take reasonable steps to compel the Contractor to make each such payment to each such subcontractor. If the City has received a demand for direct payment from a subcontractor for any amount which has been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the subcontractor as provided in subparagraphs a) and b), the City shall act upon the demand as provided in this section.

(2) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the Contractor the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the City as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the City. The demand shall be by a sworn statement delivered to or sent by certified mail to the City, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered to or so mailed the demand to the City and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by sworn statement delivered to or sent by certified mail to the City and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the subcontractor.

(e) Within fifteen days after receipt of the demand by the City, but in no event prior to the seventieth day after substantial completion of the subcontract work, the City shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount (1) retained by the City as the estimated cost of completing incomplete or unsatisfactory items of work, (2) specified in any court proceedings barring such payment, or (3) disputed by the Contractor in the sworn reply; provided, that the City shall not deduct from a direct payment any amount as provided in part (3) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The City shall make further direct payment to the subcontractor immediately after the removal of any basis for deductions set forth in (1) or (2) above.

(f) The City shall promptly deposit disputed amounts in an interest-bearing, joint account in the names of the Contractor and the subcontractor, in a bank in Massachusetts selected by the City or agreed upon by the Contractor and the subcontractor, and shall notify the Contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to subparagraph (f) shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the Contractor and in the order of receipt of such demands from the subcontractors. All direct payments shall discharge the obligation of the City to the Contractor to the extent of such payment.

(h) The City shall deduct from payments to the Contractor amounts which, together with the above-mentioned bank deposits, are sufficient to satisfy all unpaid demands for direct payment received from subcontractors. All such amounts shall be earmarked for direct payments to such subcontractors, whose claims shall have priority over all other creditors of the Contractor.

(i) If the subcontractor does not receive payment as provided in subparagraph (a), or if the Contractor does not submit a Periodic Estimate for the value of the labor or materials performed or furnished by the subcontractor, and the subcontractor does not receive payment for the same when due less the deductions provided for in subparagraph (a), the subcontractor may demand direct payment by following the procedure in subparagraph (d) and the Contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a Periodic Estimate from the Contractor. Thereafter, the City shall proceed as provided in subparagraph (e), (f) (g) and (h).

Section 8. PREVAILING WAGE REQUIREMENTS.

(2) The Contractor shall pay wages at no less than the wage rates set forth in Appendix G, incorporated as part of this Agreement: namely, State Prevailing Wage Rates; provided, however, that if any department of the City should make use of this Contract for a project which is federally funded, then the Contractor shall pay wages at the higher of the two rates. If a labor classification is not listed the Contractor shall notify Department and request instructions.

Notwithstanding anything to the contrary in Articles of the General Conditions included herein, the City may, in its sole discretion withhold payment from the General Contractor with respect to a given application for payment unless the City has in its possession payroll records that are complete, accurate, and current as of the date of said application for payment. Payment by the City on one or more occasions in the absence of the General Contractor's compliance with this section shall not constitute a waiver of the City's right to withhold payment for noncompliance on other occasions.

In addition, the Contractor shall:

(1) pay wages at least once a week;

(2) The General Contractor shall submit payroll information on a weekly basis in a format approved by City (form attached), numbered in numerical sequence and signed by the Contractor (including forms for weeks when the Contractor is not on the site, in which case there shall be a notation to the effect "no work this payroll period" and a date

anticipated for resuming work). The General Contractor shall submit these forms to: Department/Project Manager.

- (b) The Contractor shall submit to Department/Project Manager within the first week of construction:
 - (1) a list of apprenticeship programs with which the Contractor is affiliated;
 - (2) the number of apprentices on the Project employed by the Contractor.
 - (3) a list of the Contractor's employee fringe benefits;
 - (4) a copy of each project schedule, including the anticipated commencement date for each Subcontractor; and
 - (5) a list of each Subcontractor's suppliers and material men.
- (c) The contractor shall include language similar to the above in all subcontracts.

Section 9. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION

a) the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, sexual orientation, national origin, age, disability, Vietnam Era veteran status or because an employee or applicant is a recipient of federal, state, or local public assistance or housing subsidies; and

b) the Contractor shall not discriminate, in any stage of the contract from award to completion, in the selection or retention of subcontractors, suppliers, and materialmen, or in the procurement of materials or supplies, or the rental of equipment, on the basis of race, religion, sex, marital status, sexual orientation, national origin, age, disability, Vietnam Era veteran status, or because an individual is a recipient of federal, state, or local public assistance or housing subsidies; and

c) the Contractor shall post an equal employment opportunity notice in conspicuous places at the worksite, shall make copies of such notice available to employees and job applicants, and shall send such notice to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding; and

d) the Contractor shall, to the greatest extent feasible, give employment and on-site training opportunities, to lower-income, minority, women, and disabled members of the local community and shall award subcontracts, when possible, to Minority Business Enterprises (MBE) and Women Business Enterprises (WBE).

e) the contractor shall include language similar to the above in all subcontracts.

Section 10. COPELAND ANTI-KICKBACK ACT.

If this contract is in excess of \$2,000 and is federally funded, the Contractor shall comply with the Copeland "Anti-Kickback Act" (18 U.S.C. 874 and 29 CFR Part 3) more

fully set forth in Appendix G attached hereto, and shall not induce any person employed in the construction, completion, or repair of a public building or public work, to give up any part of the compensation to which he would otherwise be entitled.

Section 11. WORK HOURS AND SAFETY STANDARDS.

If this contract is in excess of \$2,000 and is federally funded, the Contractor shall comply with Sections 103 and 107 of the Contract Work Hours Safety Standards Acts (40 U.S.C. 327-333), as supplemented by Department of Labor regulations at 29 CFR part 5. To that end, the Contractor shall compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible, provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The Contractor shall ensure that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

Section 12. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.

If this contract is in excess of \$100,000 and is federally funded, the Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.)

Section 13. CONTRACTOR'S CERTIFICATIONS.

The Contractor hereby certifies under oath:

(a) That if this Contract is in excess of \$100,000 and is federally funded, the Contractor will abide by the Byrd Anti-Lobbying Amendment (31 U.S.C.1352), and more specifically:

(1) That no federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal contract and the extension, continuation, renewal, amendment, or modification of this Federal contract; and

(2) That if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, the Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and

(3) That the Contractor will include the language of this certification in all subcontracts, and that all subcontractors shall certify and disclose accordingly.

THIS CERTIFICATION IS A MATERIAL REPRESENTATION OF FACT UPON WHICH RELIANCE WAS PLACED WHEN THIS THE AWARD OF THIS CONTRACT WAS MADE. ANY PERSON WHO FAILS TO FILE THE REQUIRED CERTIFICATION

SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$10,000 AND NOT MORE THAN \$100,000 FOR EACH FAILURE.

(b) Drug-Free Workplace Act of 1988 (42 U.S.C. 701):

That, if this Contract is federally funded, the Contractor will provide a drug-free workplace and comply with the HUD rules contained in 24 CFR part 24M, including notification to employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited; that action will be taken against employees violating the prohibition; and that an employee who is convicted of manufacturing, distributing, dispensing, possession, or use of a controlled substance may be terminated or required to participate in a drug abuse assistance or rehabilitation program approved for such purpose by a Federal, State, or local health, law enforcement, or other appropriate agency.

(c) Debarment and Suspension: That the Contractor is a duly licensed general contractor, and

(1) That neither the Contractor nor any of its principal employees are on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs [E.O. 12549 and E.O. 12689 at 24 CFR part 24, applicable to contracts exceeding the small purchase threshold of fixed by 41 U.S.C. 403 (11)]; and

(2) That the Contractor has not been debarred or suspended by any state agency or city or town in the Commonwealth of Massachusetts.

(d) Organization and Authority: That the Contractor is a duly organized and validly existing _____ (corporation/general partnership/limited partnership, trust, or sole proprietorship) and is qualified to do business and is in good standing in the Commonwealth of Massachusetts; that this Contract has been duly executed and delivered on behalf of the Contractor by its _____ pursuant to and in full compliance with the authority granted by the Contractor's organizational documents and/or (in the case of a corporation) by a vote taken at duly called meeting at which a quorum was present and voting; that such authority is still in full force and effect as of the date of execution of this Contract; and that the person executing this Contract is the present holder of the title which he or she purports to hold.

(e) Noncollusion: That the bid upon which this Contract was based was made without collusion or fraud with any other person and was in all respects bona fide and fair. As used in this paragraph, the word "person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.

(f) Tax Compliance: That the Contractor is in full compliance with all federal and state laws relating to income taxes, and has paid all real estate and personal property/excise taxes, water charges, fines and other municipal lien charges due to the City of Somerville, and the Contractor's Federal Tax Identification Number is # _____.

Section 14. CONTRACTOR'S RECORDS.

(a) Federal Requirements: The Contractor shall permit the City, HUD and/or any other administering agency named herein, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents, papers, and

records of the Contractor which are directly pertinent to a specific HUD program for the purpose of making audits, examinations, excerpts, and transcriptions.

(b) State Requirements: In accordance with G.L. Chapter 30, §39R, for contracts in an amount or estimated amount greater than \$100,000: (i) the General Contractor shall make and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor; and (ii) until the expiration of six years after final payment, the office of the Inspector General and the Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the Contractor or of his subcontractors that directly pertain to and involve transactions relating to the Contractor or his subcontractors; and (iii) the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the Awarding Authority, including in his description the date of the change and reasons therefor and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes; and (iv) the Contractor shall have filed a Statement of Management on Internal Accounting Controls, as described in paragraph "(1)" below prior to the execution of the Contract; and (v) the Contractor has filed prior to execution of the Contract and will continue to file annually, an Audited Financial Statement for the most recent completed fiscal year as set forth in paragraph "(2)" below.

(1) The Statement of Management on Internal Accounting Controls is a written statement certifying that the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that transactions are executed in accordance with management's general and specific authorization; that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; that access to assets is permitted only in accordance with management's general or specific authorization; and that recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

(2) The Audited Financial Statement is a statement prepared and signed by an independent certified public accountant, stating that he has examined the Statement of Management on internal accounting controls, and expressing an opinion as to (i) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amount which would be material when measured in relation to the applicant's financial statements.

The Contractor shall annually file with the Commissioner of Capital Asset Management and Maintenance during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountants report. Such statements shall be made available to the Awarding Authority upon request.

(c) Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in G.L. 4, §7 or equivalent federal legislation. They shall not be made available to the public, but shall be available only to the governmental authorities named herein.

Section 15. CONFLICT OF INTEREST LAWS.

The City and the Contractor shall comply with all federal and state conflict of interest statutes and regulations.

Section 16. EVENTS OF DEFAULT.

The following shall be considered Events of Default:

a. The Contractor makes a written admission of the Contractor's inability to pay debts; or the Contractor becomes the debtor or defendant in (i) a voluntary or involuntary petition in bankruptcy, (ii) a petition for appointment of a receiver, (iii) a levy of an attachment or execution, (iv) an assignment for the benefit of creditors, (v) a winding up or dissolution of a partnership or corporation; or (vi) any other proceeding under which a court of competent jurisdiction assumes custody or control over the Contractor.

b. The Contractor fails to prosecute the work with such diligence as will, in the reasonable estimation of the City, ensure substantial completion within the time specified in the Contract Documents; and/or

c. The Contractor is in breach of the Contract Documents and has failed to cure such breach after written notice from the City specifying 1) the breach, 2) what must be done to cure the breach; and 3) the time within which the breach must be cured.

Section 17. REMEDIES UPON DEFAULT.

a. HUD Action. If the Contractor is in default, HUD and/or any other administering agency named herein may, with or without the consent of the City, cancel, suspend, or terminate this Contract in whole or in part; require the withholding or disallowance all or part of the funding for the project; declare the contractor ineligible for further Government contracts or avail itself of any other remedies available under the law.

b. City Action. If the Contractor is in default, the City may elect to do any or all of the following: 1) temporarily withhold cash payments pending correction of the deficiency; and/or 2) terminate this Contract, and

(a) hold the Contractor and its sureties liable in damages;

(b) require the Contractor's sureties to complete the Contract;

(c) take possession and use any materials, machinery, implements, and tools on the site, without liability for loss or damage, following which use, the Contractor shall be liable for their removal from the site;

(d) complete the work using the services of another contractor (in which case the City shall have no obligation to use a competitive process to obtain the lowest contract prices) and look to the Contractor and the Contractor's sureties for the difference between the cost to complete the work and the contract sum hereunder.

Section 18. TERMINATION WITHOUT CAUSE.

The City may terminate this Contract without cause by written notice to the Contractor, in which case, the Contractor shall be compensated for reasonable costs incurred up to the date of termination, calculated on a percentage completion basis using the progress schedule and schedule of values. The City shall also compensate the Contractor for non-terminable obligations properly incurred by the Contractor prior to termination; provided however, that the Contractor shall use its best efforts to mitigate the cost of such non-terminable obligations and shall in no event incur any new obligations after the date of termination.

Section 19. INSURANCE

The Contractor shall obtain and maintain in full force and effect the insurance coverage required under Appendix C and shall furnish the City with current certificates of insurance **naming the City of Somerville as a certificate holder.**

Section 20. INDEMNIFICATION.

The Contractor shall indemnify, defend, and save harmless the City from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action, suits, claims, and demands and shall pay any judgment entered against the City on account of personal injuries or damage to property arising out of the work of this Contract.

Section 21. NOTICES.

Notices shall be in writing, and may be transmitted by mail, federal express, or fax, provided such transmittal is evidenced by a U.S. Mail or Federal Express return receipt or a fax-generated receipt showing the number to which the fax transmission was made:

(a) to the Contractor, at the address set forth in this Agreement or such other address as the Contractor may have designated from time to time in writing, or to
FAX # _____.

(b) to the City, addressed to:

Somerville School Department
Finance Director
42 Cross Street
Somerville, MA 02145
FAX # 617-666-1130

Notices shall be deemed given when mailed or faxed.

Section 22. MODIFICATION.

No amendment or modification to this Agreement shall take effect unless it is in writing, signed by all parties.

Section 23. ASSIGNMENT/SUBCONTRACTING.

The Contractor shall not assign or subcontract this Agreement or

any portion of the work without the prior written consent of the City.

Section 24. GOVERNING LAW.

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and the United States of America.

Section 25. SEVERABILITY.

In the event that any provision of this Agreement is found to be legally unenforceable, the remainder of the Agreement shall remain in full force and effect.

Section 26. NON-APPLICABILITY OF FEDERAL REQUIREMENTS.

If this section is checked, it means that this contract has not been funded with federal funds and the obligations and requirements under federal law which are set forth in this contract do not apply.

 X (check here)

SPECIAL PROVISIONS

Completion Date

This contract will be in effect **one year from the date of contract award.**

Bonds

A **Performance and/or Payment** bond for **50% or 100%** of the contract amount, will be required by the successful bidder.

Note: The successful bidder agree that if he is selected as the contractor, he will, within five (5) days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the Awarding Authority, execute a contract in accordance with the terms of this bid and furnish a labor and materials bond from a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the Award Authority in the amount stated.

Insurance

The contractor must provide the following insurance certificates before the contract can be fully executed:

General Liability:	\$2,000,000
Automobile:	\$100,000
Workers' Compensation:	as required by General Law

The Certificates of Insurance must show the City of Somerville as the Certificate Holder and as Additional Insured. Should any policies be cancelled before the expiration date, the issuing company must send written notice to the City 30 days prior to cancellation.

Prevailing Wage Law

Bidders will be required to comply with the Prevailing Wage Laws, M.G.L. c. 149. Every bidder will be required to submit a certified payroll to the City every week. The City will take an active roll in reviewing and monitoring these payrolls weekly. If the City suspects any violations, the City will report them to the Attorney General's Fair Labor and Business Practices Division. The Attorney General's office, after conducting an investigation and a hearing can order the bidder to halt work, if it finds prevailing wage violations. Within fifteen days after completion of its portion of the work, the bidder must submit a Statement of Compliance with the prevailing wage law. The City reserves the right to conduct hearings on bids that are significantly below the average bid price submitted on a project, to make findings of fact, and determinations. Weekly payrolls are public records and the bidder shall make them available upon request. The bidder is required to keep these records for a period of three years from the date of completion of this contract.

GENERAL TERMS AND CONDITIONS

1. CONTRACTOR'S OBLIGATION

The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified, in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings, and in accordance with the directions of the Design Professional or Department as given from time to time during the progress of the work. He shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required.

The Contractor shall observe, comply with and be subject to all terms, conditions, requirements and limitations of the contract and specifications, and shall do, carry on and complete the entire work to the satisfaction of the Design Professional and Department.

2. PERFORMANCE/PAYMENT BONDS

The Contractor shall furnish a performance bond in an amount at least equal to **Fifty (50%) or one hundred percent (100%)** of the contract price as security for the faithful performance of this Contract and also a payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, territorial or local law, as security for payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law, and shall to the extent feasible be in the form developed by the American Institute of Architects (AIA).

3. DESIGN PROFESSIONAL'S AUTHORITY

The Design Professional shall give orders and directions contemplated under the contract and specifications, relative to the execution of the work. The Design Professional shall determine the amount, quality, acceptability and fitness of several kinds of work and the construction thereof. The Design Professional's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any questions shall arise between the parties

hereto relative to said contract or specifications, the determination or decision of the Design Professional shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such question. The Design Professional shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this contract and other Contractors performing work for DPW shall be adjusted and determined by the Design Professional. In accordance with Chapter 30, section 30P of the General Laws the Design Professional's decision on interpretation of the specifications, approval of equipment or material, or any other approval, or progress of the work, shall be made promptly and, in any event, no later than thirty days after a written submission for decision; but if such decision requires extended investigation and study, the Awarding Authority or the Design Professional shall give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.

4. SUBCONTRACTING

- a. The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors, subject to the provisions of this section.
- b. The Contractor shall not award any work to any subcontractor without prior written approval of Department, which approval will not be given until the Contractor submits a written approval statement concerning the proposed award to the subcontractor, which statement shall contain such information as Department may require. All subcontracts subject to Mass. General Laws, Chapter 149, Sections 44A-J, shall comply with the filed sub-bid requirements of that statute.
- c. The Contractor shall be as fully responsible for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- d. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the Terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that Department may exercise over the Contractor under any provision of the contract documents.
- e. Nothing contained in this contract shall create any contractual relation between any subcontractor and Department.

5. PERMITS AND CODES

- a. It shall be the Contractor's responsibility to obtain and pay for all permits required in connection with the work. Unless otherwise agreed by the Awarding Authority in writing, the Contractor shall, prior to commencement of the work, (i) meet with the City of Somerville Inspectional Services Department to determine what permits are needed for the work; (ii) obtain all such permits; and (iii) provide copies of such permits to the Awarding Authority. Permits shall include, without limitation, demolition, foundation, digsafe, and building

permits; permits for removal, sealing up, or installation of utilities, including gas, electrical, water and sewer; and permits for obstructing public streets and sidewalks.

b. The Contractor shall comply with all state and local laws, ordinances, and codes. Before installing any work, the Contractor shall examine the Drawings and Technical Specifications for compliance with applicable laws, ordinances, and codes and shall immediately report any discrepancy to OHCD. Where the requirements of the Drawings and Technical Specification fail to comply with applicable laws, ordinances, or codes, OHCD will adjust the Contract by change order to conform to such laws, ordinances or codes (unless waivers in writing covering the differences have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices. Should the Contractor fail to observe the foregoing provisions and proceed with the construction, (notwithstanding the fact that such construction is in compliance with the Drawings and Technical Specifications), the Contractor shall remove such work without cost to OHCD, and a change order will be issued to cover only the excess cost that the Contractor would have been entitled to receive if the change had been made before the Contractor commenced work on the items involved.

c. Notwithstanding the generality of the foregoing, the Contractor shall comply with federal, state and local laws, ordinances, and codes governing the disposal of excavation materials, and debris and rubbish on and off the Project site.

6. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Design Professional or Department will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Design Professional or Department in accordance with said schedule, and (b) a schedule fixing the dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

7. TECHNICAL SPECIFICATIONS AND DRAWINGS

Anything mentioned in the Technical Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Technical Specifications, shall be of like effect as if shown on or mentioned in both. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the Designer or Department for a decision. Said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense.

8. SHOP DRAWINGS

a. All required shop drawings, machinery, details, layout drawings, etc. shall be submitted to the Designer or Department for approval sufficiently in advance of requirements to afford

ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at his own risk and expense, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved, and no claim by the Contractor for extension of the Contract time will be granted by reason of his failure in this respect.

b. Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of Contract price and/or time. Otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.

c. If a shop drawing is in accord with the Contractor or involves only a minor adjustment in the interest of Department not involving a change in Contract price or time, the Designer or Department may approve the drawing. The approval shall be general and shall not relieve the Contractor from his responsibility for adherence to the contract or for any error in the drawing and shall contain in substance the following: "The modification shown on the attached drawing is approved in the interest of Department to affect an improvement for the Project and is ordered with the understanding that it does not involve any change in the Contract Price or time; that it is subject generally to all Contract stipulation and covenants; and that it is without prejudice to any and all rights of Department under the Contract and surety bond or bonds."

9. MATERIALS AND WORKMANSHIP

a. Unless otherwise specifically provided for in the Technical Specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the Technical Specifications as "equal to" any particular standard, the Designer shall decide the question of equality.

b. The Contractor shall furnish to Department for approval the manufacturer's detailed specifications for all machinery, mechanical equipment and other equipment articles and materials, together with complete information as to type, performance characteristics, and all other pertinent information. Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejections.

c. Materials specified by reference to the number or symbol of a specific standard, such as an A.S.T.M. Standard, or a Federal Specification or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the invitation for Bids, except as limited to type, class or grade, or modified in such reference. The standards referred to, except as modified in the Technical Specifications, shall have full force and effect as though printed therein.

d. Department may require the Contractor to dismiss from the work such employee or employees as, Department or the Designer may deem incompetent, careless, or insubordinate.

10. SAMPLES

a. The Contractor shall promptly submit all material and equipment samples called for in the Contract Documents or required by the Designer or Department. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk and expense, until the required samples have been approved in writing by Department or the Designer. Any delay in the work caused by late or improper submission of samples for approval shall not be considered just cause for an extension of the contract time.

Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying letter from the Contractor shall state that the sample complies with Contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Designer in passing upon the acceptability of the sample promptly. It shall also state that all materials or equipment furnished for use in the project will comply with the sample.

b. Approval of any sample shall be general only and shall not constitute a waiver of Department's right to demand full compliance with Contract requirements. After actual deliveries, the Designer will have such check tests made as he deems necessary in each instance and may reject materials and equipment for cause, even though such materials and equipment have been given general approval. If materials or equipment which fail to meet check tests have been incorporated in the work, the Designer will have the right to cause their removal and replacement by proper materials and equipment or to demand and secure such reparation by the Contractor as is equitable.

c. Except as otherwise specifically stated in the Contract, the costs of samples and tests will be as follows:

- (1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the Project by the Designer.
- (2) The Contractor shall assume all costs of retesting materials which fail to meet contract requirement.
- (3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient.

11. INSPECTION OF THE WORK

a. All materials and workmanship shall be subject to inspection, examination, and/or testing by Department or its designated representative. Department shall have the right to reject defective material and workmanship and require it to be promptly segregated and removed from the Project Area and replaced with materials and workmanship of specified quality

without charge. If the Contractor fails to proceed at once with the correction of rejected materials and workmanship, Department may proceed to correct the work itself and charge the cost of the same against any monies which may be due the Contractor, without prejudice to any other rights or remedies of Department.

b. The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. All tests will be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the Technical Specifications.

c. The Contractor shall notify Department sufficiently in advance of covering or concealing any work in order to permit proper inspection. If any work is covered or concealed without the consent of Department, the Contractor shall uncover and recover such work for inspection at the contractor's expense, when so requested by Department. Should it be considered necessary or advisable by Department to examine work already completed and covered, the Contractor shall on request promptly uncover said work. If such work is found to be defective in any important or essential respect the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus an additional amount equal to that allowed for change orders shall be allowed the Contractor and he shall, in addition, if completion of the work of the entire Contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

d. Whenever the quantity justifies it, inspections of work may be made at the place of production, manufacture or shipment, in which case, acceptance shall be final, except as regards (1) latent defects, (2) damage or loss in transit; or (3) fraud or such gross mistakes as amount to fraud. Otherwise, inspections of materials shall take place at the Project Site.

e. No examination, inspection, or testing, by Department or its agent shall relieve the Contractor or the Contractor's sureties of liability for defective materials or workmanship.

f. Any inspection party may include one or more HUD representatives and one or more representatives of each department of the City having jurisdiction over the work being inspected.

12. DEDUCTION FOR INCORRECTED WORK

If Department deems it expedient not to require the Contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the Contractor and Department. Any dispute regarding such deduction shall be subject to settlement, in case of dispute, as herein provided.

13. CONSTRUCTION SUPERINTENDENT

At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. Such representative shall be acceptable to the Design Professional or Department and shall continue in that capacity for the duration of the job unless he ceases to be on the Contractor's payroll.

14. ACCIDENT PREVENTION

- a. The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes shall be observed and the Contractor shall take or cause to be taken such additional safety and health measures as Department may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable local laws.
- b. The Contractor shall indemnify and save harmless Department from any claims for damages resulting from personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this Contract.

15. EXISTING UTILITY LINES

Should the Contractor in the execution of his work uncover or discover utility service lines not indicated on the relevant drawings, or that do not show signs of singular service to any existing structures being demolished, the Contractor shall cease work in that area immediately and promptly notify the Department/Project Manager. Within forty-eight hours, the Department/Project Manager will inspect the site and issue written instructions to the Contractor. The Contractor shall proceed with only after such written instructions have been received and shall proceed in full compliance with such instructions.

The above mentioned situation or similar circumstances and/or modification if any, shall not relieve the Contractor from his responsibilities in this Contract and also it is without prejudice to any and all rights of Department covering this said contract and surety or bonds.

16. CARE OF WORK

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by Department/Project Manager
- b. The Contractor shall provide sufficient competent watchmen, both day and night, including Saturdays, Sundays and holidays, as necessary, from the time the work is commenced until final completion and acceptance. Sufficient lighting shall be provided to aid in the prevention of injury to passersby or vandalism to the property or other illegal activities.
- c. In an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorization from Department is authorized to act at his discretion to prevent such threatened loss or injury, and he shall so act. He shall likewise act if instructed to do so by the Department. Any compensation claimed by

the Contractor on account of such emergency work will be determined by the Department as provided in the Section - CHANGES IN THE WORK.

d. The Contractor shall avoid damage as a result of its operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc. and the Contractor shall at its own expense completely repair any damage thereto caused by its operations.

e. The Contractor shall shore up, brace, underpin, secure, and protect as may be necessary, all foundations and other parts of existing structure adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the improvements embraced in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of work. The Contractor shall indemnify and save harmless the City of Somerville and/or Department from any liability for damages on account of settlement or the loss of lateral support of adjoining property resulting from the Contractor's failure to comply with this section.

17. WEATHER PROTECTION

a. In the event of temporary suspension of work, during inclement weather, the Contractor will carefully protect and will cause his subcontractors to carefully protect all work and materials against damage or injury from the weather. If, in the opinion of the Design Professional or Department, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect the work, such work or materials shall be removed and replaced at the expense of the Contractor.

b. It is the intent of these Specifications to require that, in all Chapter 149, s. 94A contracts, the General Contractor shall provide temporary enclosures and heat to permit construction work to be carried on during the months of November through March in compliance with M.G.L. Chapter 149, Section 44D (G). These Specifications are not to be construed as requiring enclosures or heat for operations that are not economically feasible to protect in the judgment of Department. Included in the preceding category, without limitation, are such items as site work, excavation, pile driving, steel erection, erection of certain "exterior" wall panels, roofing, and similar operation:

(1) "WEATHER PROTECTION" shall mean the temporary protection of that work adversely affected by moisture, wind and cold, by covering, enclosing and/or heating. This protection shall provide adequate working areas during the months of November through March as determined by the Design Professional and consistent with the approved construction schedule to permit the continuous progress of all work necessary to maintain an orderly and efficient sequence of construction operations. The General Contractor shall furnish and install all "Weather Protection" material and be responsible for all costs, including heating required to maintain a minimum temperature of 40 degrees F, at the working surface. This provision does not supersede any specific requirements for methods of construction, curing of materials or the applicable General Conditions set forth in the Contract Articles with added regard to performance obligations of the Contractor.

(2) Within 30 calendar days after his award of contract, the General Contractor shall submit in writing to Department for approval, three copies of his proposed methods for "Weather Protection".

(3) Installation of weather protection and heating devices shall comply with all safety regulations including provisions for adequate ventilation and fire protection devices. Heating devices which may cause damage to finish surfaces shall not be used.

(4) The General Contractor shall furnish and install one accurate Fahrenheit thermometer at each work area as designated by the Designer. However, one additional accurate Fahrenheit thermometer shall be provided for every 2,000 square feet of floor space where the work areas exceed 2,000 square feet.

18. SANITARY FACILITIES

The Contractor shall furnish, install and/or maintain ample sanitary facilities for the workmen. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the sanitary codes of the State and Local Government. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations. Nothing in this Section shall be construed as forbidding the use of facilities available in existing buildings on the job site if they meet the above requirements and the use of them will not interfere with the progress of the work.

19. USE OF PREMISES AND REMOVAL OF DEBRIS

The Contractor expressly undertakes at his own expense:

- a. to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;
- b. to place upon the work or any part thereof, only such loads as are consistent with the safety of that portion of the work.
- c. to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance.
- d. before final payment to remove all surplus material, false work, temporary structure, including foundations thereof, plant of any description and debris of every nature resulting from this operations, and to put the site in a neat, orderly condition.
- e. to affect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Design Professional or Department not to cut or otherwise work of any other contractor.

20. COORDINATION WITH OTHER CONTRACTORS

The Contractor shall coordinate his operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of work. The Contractor, including his subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Design Professional or Department immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

21. QUANTITIES OR ESTIMATES

Wherever the estimated quantities of work to be done and materials to be furnished under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by Department to complete the work contemplated by the contract, nor shall any such increases or diminution shall in no way violate this contract, nor shall any such increase or diminution give cause for claims or liability for damages.

22. DISPUTES

a. All disputes arising under this Contract or its interpretation, whether involving law of fact or both, or extra work, and all claims for alleged breach of Contract shall within ten (10) days of commencement of the dispute be presented by the Contractor to Department for decision. All papers pertaining to claims shall state the facts surrounding the claims in sufficient detail to identify the claim, with its character and scope. In the meantime, the Contractor shall proceed with the work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim will be considered only for a period commencing ten (10) days prior to the receipt by Department of notice thereof.

b. The Contractor shall submit proof of the Contractor's claim in detail. Each decision by Department will be in writing and will be mailed to the Contractor by registered or certified mail, return receipt requested.

c. If the Contractor does not agree with Department's decision the Contractor shall not delay the work, but shall notify Department promptly that he is proceeding with the work under protest and he may then accept the matter in question from the final release.

23. LAND AND RIGHTS-OF-WAY

Prior to the start of construction, Department shall obtain all lands and rights-of-way necessary for the carrying out and completion of work to be performed under this contract.

24. WARRANTY OF TITLE

No material, supplies, or equipment to be installed as part of the work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and, upon completion of all work, shall deliver the same to Department free from any claims, liens, or charges. Neither the Contractor nor any person, furnishing any material or labor for any work covered by this Contract shall have any right to a lien. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the Contractor for their protection, or to recover under any laws permitting such persons to look to funds due the Contractor in the hands of Department. The provisions of this paragraph shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

25. GENERAL GUARANTY

Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by Department shall constitute any acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. Department will give notice of observed defects with reasonable promptness.

26. REVIEW OF RECORDS

Department, its authorized representative and agents and the HUD Representative for the Secretary shall, at all times have access to and be permitted to observe and review all work materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however, that all instructions and approval with respect to the work will be given to the Contractor only by Department through its authorized representatives or agents.

INSURANCE SPECIFICATIONS

INSURANCE REQUIREMENT FOR AWARDED VENDOR ONLY:

Prior to commencing performance of the Contract, the Vendor shall furnish to the School Department a Certificate of Insurance evidencing the following:

- A. GENERAL LIABILITY - Comprehensive Form
- | | | | |
|-------------------------|--------------------|--------------|--------------------|
| General Aggregate | <u>\$2,000,000</u> | Each Occ. | <u>\$1,000,000</u> |
| Products - Comp/OP Agg. | <u>\$1,000,000</u> | Fire Damage | <u>\$ N/A</u> |
| Personal Injury | <u>\$1,000,000</u> | Medical Exp. | <u>\$ N/A</u> |
- B. ERRORS & OMISSIONS (PROFESSIONAL LIABILITY)
- | | | | |
|-------------------|---------------|-----------|---------------|
| General Aggregate | <u>\$ N/A</u> | Each Occ. | <u>\$ N/A</u> |
|-------------------|---------------|-----------|---------------|
- C. SEXUAL ABUSE/CHILD MOLESTATION
- | | | | |
|-------------------|---------------|-----------|---------------|
| General Aggregate | <u>\$ N/A</u> | Each Occ. | <u>\$ N/A</u> |
|-------------------|---------------|-----------|---------------|
- D. COVERAGE FOR PAYMENT OF WORKERS' COMPENSATION BENEFITS PURSUANT TO CHAPTER 152 OF THE MASSACHUSETTS GENERAL LAWS IN THE AMOUNT AS LISTED BELOW:
- E. WORKERS' COMPENSATION - EMPLOYER'S LIABILITY STATUTORY
- F. AUTOMOBILE LIABILITY INSURANCE AS LISTED BELOW:

BODILY INJURY LIABILITY	<u>\$100,000 - \$200,000</u>
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1. A contract will not be executed unless a certificate(s) of insurance evidencing the above-described coverage is attached.
2. Failure to have the above-described coverage in effect during the entire period of the contract shall be deemed to be a breach of the contract.
3. All applicable insurance policies shall read:
 "CITY OF SOMERVILLE" as a certificate holder and as an additional insured for general liability only along with a description of operation in the space provided on the certificate.

**CITY OF SOMERVILLE
SCHOOL DEPARTMENT
42 CROSS STREET
SOMERVILLE, MA 02145**

NOTE: IF DURING TERM OF THIS CONTRACT YOUR INSURANCE EXPIRES, YOU SHALL BE RESPONSIBLE FOR SUBMITTING A NEW CERTIFICATE(S) COVERING THE PERIOD OF THIS CONTRACT. NO PAYMENT WILL BE MADE ON A CONTRACT WITH AN EXPIRED INSURANCE CERTIFICATE(S).