

Notice To Bidders
Fashion Institute of Technology
Undergraduate Commencement Catering Services
RFP # C1661

FIT is **ONLY** accepting electronic bids for the subject project. You must email your bid to purchasingbids@fitnyc.edu in PDF format and it should include all of the requested documents.

Email subject must include RFP# and Title

Only those proposals emailed to FIT Purchasing Office on or before **12:00 P.M. on January 31, 2025**, will be considered.

The Fashion Institute of Technology *will not* be responsible for improper delivery of proposals that do not comply with these instructions. Late proposals will not be accepted. Those items for which Proposers have or assert proprietary rights, or which must, under prior contract, remain confidential, shall be clearly indicated. Submission of Proposal shall be deemed to grant FIT the right to utilize submissions in any way, with or without prior notice. Absent affirmative assertion, FIT reserves such right to use.

**Request for Proposal
Undergraduate Commencement Catering Services
RFP # C1661**

I. Schedule

RFP Release Date: **January 9, 2025**

Written questions may be submitted to Purchasing Office via email:
purchasingbids@fitnyc.edu Answers will be provided to all Consultants in a timely manner.

Last Day for Receipt of Written Questions: **January 17, 2025, by 12:00 PM**

Proposal Due Date: **January 31, 2025, by 12:00 PM**

Presentations/Interviews (if necessary): **Week of February 17, 2025**

Selection of Consultant: **by March 1, 2025**

II. Introduction

- A. The Fashion Institute of Technology (“FIT” or “College”), a community college of art and design, business and technology of the State University of New York, currently has an enrollment of approximately 8,500 students. Located in the Chelsea area of Manhattan, FIT facilities are composed of a twelve-building complex containing administrative offices, classrooms, computer labs, and studios. The campus also includes the Gladys Marcus Library and The Museum at FIT. Four residence halls serve approximately 2,200 students.
- B. FIT seeks to engage a firm to provide catering services for the undergraduate ceremonies at SummerStage at Rumsey Playfield at Central Park.

The 2025 ceremony dates are May 21 and 22 from 8:00 AM to 6:00 PM.

The firm must have catered at City Park Foundation venues. Firms with experience catering events at SummerStage are highly preferred.

Applications from businesses owned by minorities, women, veterans, and persons with disabilities are encouraged.

III. Consultant Requirements

- A. All Firms shall meet the following requirements and furnish all necessary information with the Proposal. Submit one (1) complete digital Proposal. Failure to comply with these requirements shall be grounds for rejection of your Proposal. FIT reserves the right to determine that a Firm has substantially met all the requirements of the RFP and/or ask for additional information. Those items for which the Firm have or assert proprietary rights, or which must, under prior contract, remain confidential, shall be clearly indicated. Submission of Proposal shall grant FIT the right to utilize submissions in any way, with or without prior notice. Absent affirmative assertion, the College reserves such right to use.

Proposals shall be emailed in PDF format on or before **January 31, 2025, by 12:00 PM** to:

purchasingbids@fitnyc.edu

- B. Questions shall be submitted in writing to the attention of Purchasing Office via email: purchasingbids@fitnyc.edu, no later than **January 17, 2025, by 12:00 PM**. Answers will be provided in writing in a timely manner.
- C. Firm shall provide a comprehensive and complete Proposal with individual sections. Each section shall be organized in the sections detailed below. Each section shall contain, at a minimum, the information described below.

Firm shall provide with its Proposal:

1. Overview

- a. Written confirmation and proof that Firm has been providing catering services for a minimum of five (5) years immediately prior to the date of this RFP.
- b. Description of range of business services; including a brief narrative statement and general history of operations. Provide corporate overview summarizing background, qualifications, areas of expertise, and work experience.
- c. Proposed menu and staffing for FIT's event

2. Similar Experience and References

- a. A list of clients for whom Consultant has provided similar services.
- b. A minimum of two (2) client references from a Central Park Foundation venue, preferably experience at SummerStage, that include project description, project scope, contact person, title, and phone number.

IV. Fee Proposal

Firm shall provide a fee proposal in accordance with the attached Proposal Analysis Sheet.

V. Evaluation Criteria

- A. A committee will use the following criteria to evaluate the Proposals, which meet the requirements of these specifications.
- | | |
|--|------------|
| 1. Range of Business Services and Qualifications | <u>20%</u> |
| 2. Similar Experience and References | <u>10%</u> |
| 3. Cost | <u>45%</u> |
| 4. Proposed Menu and Staffing | <u>25%</u> |
- B. FIT will award the Contract to the Firm with the highest scores on criteria 1 through 4.

FIT further reserves the right to award the Contract to the Firm whose product or service best meets the terms, conditions, and specifications of the Proposal and whose Proposal is considered to best serve FIT's interest. In evaluating the criteria above, FIT may consider the following factors, including, as applicable, but not limited to: the ability, capacity, and skill of the Firm to perform as required; whether the Firm can perform promptly, or within the time specified without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the Firm; the quality of past performance by the Firm; the previous and existing compliance by the Firm with relevant laws and regulations; the sufficiency of the Firm's financial resources; the availability, quality, and adaptability of the Firm's equipment, supplies and/or services to the required use, as applicable; and the ability of the Firm to provide future maintenance, service, and/or parts if applicable.

VI. Firm's Responsibilities

Two types of catering services that the Firm must provide:

1. Concessions: Celebration in the Park for 10,000 guests (5,000 guests on Day 1 and 5,000 guests on Day 2)
 - a. (2) Beverage Stations with Pre-Filled Water Bottles:
 - i. Unflavored Water
 - ii. Flavored Water
 - iii. Unsweetened Iced Tea
 - b. (2) Ice Cream Carts with a Selection of Novelty Ice Cream Bars
 - c. (3) Snack stations containing an assortment of options, such as potato chips, popcorn, cookies, trail mix, brownies, protein bars, a selection of whole fruits. Gluten-free and nut-free options to be included.
2. Platform Party: Breakfast, Lunch, and Snacks for two days : (75) Faculty, (25) VIPs, (40) Production, & (60) Staff
 - a. Breakfast for both days
 - i. Breakfast Beverage Service (coffee, tea, assorted juices, water, Gatorade)
 - ii. Seasonal Mixed Fruit

- iii. Assorted Breads & Pastries, such as miniature croissants, muffins, and loaves, with gluten-free, nut-free, and vegan options
- iv. (2) Breakfast sandwich options
 - 1. 100 meat-based
 - 2. 100 non-meat-based
- b. Lunch for both days
 - 1. Sandwiches and/or Bowls
 - a. (50) Meat option 1
 - b. (50) Meat option 2
 - c. (50) Meat option 3
 - d. (50) Vegetarian option
 - e. (200) Side Salad
 - c. Additional Services to be offered throughout the two days
 - 1. Lunch and Snack Beverage Service (Coffee, Tea, Assorted Soft Beverages, Gatorades, and Waters)
 - 2. Snacks – All Celebration in the Park Concession snacks will be made available to VIP guests and staff

VII. Term

- A. The initial term (“Initial Term”) of Contract shall be one year (1) and commence upon notice from College to Contractor via Purchase Order.
- B. College shall have the option to renew Contract in its best interest for four (4) additional 1 year period (“Renewal Terms”). If College elects to renew Contract, College will provide notice to Contractor ninety (90) days prior to the expiration date of Contract or such renewal year. Failure to notify Contractor within this time period shall not operate as a waiver of College’s right to renew Contract. Each renewal shall be on the same terms and conditions as the prior term, with the exception of any adjustments to pricing, which may be made at the discretion of the provider in accordance with prevailing market conditions or other factors.
- C. At the end of the initial Term or any Renewal Term (collectively, “Terms”), Contractor shall, at the College’s written request for an additional term, provide Services as specified in Contract for a period not to exceed three (3) months under the same terms and conditions as the prior Term

Proposal Analysis Sheet
 Fashion Institute of Technology
Undergraduate Commencement Catering Services
RFP No. C1661

Description	Cost
Proposal for Undergraduate Commencement Catering Services	
May 21 – Graduation 8:00 AM to 6:00 PM 3 Groups per day. Use of stalls for concession snacks, (2) beverage stations, and (2) ice cream carts	\$ _____
May 22 – Graduation 8:00 AM to 6:00 PM 3 Groups per day. Use of stalls for concession snacks, (2) beverage stations, and (2) ice cream carts	\$ _____
Platform Party – Breakfast, Lunch, & Snacks for (4) groups – (75) Faculty, (25) VIPs, (40) Production, & (60) Staff	\$ _____

GRAND TOTAL: \$ _____

IMPORTANT: Proposal to be as all-inclusive as possible.

Proposer: _____
 (Print or Type Company/Partnership/Individual Name)

By: _____
 (Signature of Authorized Representative)

Name: _____
 (Print or Type Name of Representative)

Title: _____
 (Print or Type Title of Representative)

Telephone: _____

Facsimile: _____

Federal ID #: _____

E-mail: _____

Date: _____

IMPORTANT: This proposal analysis page is the only pricing format acceptable. The Firm must submit pricing using this form. FIT will not accept proposal responses on any other form.

FASHION INSTITUTE OF TECHNOLOGY RFP TERMS AND CONDITIONS

A. RFP REQUIREMENTS:

1. Contractors shall submit the complete RFP document, consisting of RFP Terms and Conditions, Contract Terms and Conditions and Specifications, as issued by FIT, including required signatures and attachments, in a sealed envelope before the time and at the location stated on the cover page of the RFP.
2. Once submitted Contractors are not permitted to change or modify RFP Terms and Conditions, Contract Terms and Conditions and Specifications. All Contractors bid on the same terms and conditions.
3. Contractors are responsible to make certain that sealed RFPs are received at the FIT Purchasing Department before the time of the RFP opening.
4. RFPs will be opened publicly.
5. RFPs received after the time of the RFP opening will be returned unopened.

B. SITE INSPECTION: N/A

1. Before submitting an RFP, Contractors were expected to examine the work site and its surroundings during the mandatory walk through. Contractors shall be presumed to have full knowledge of work site conditions relating to the work of the Contract and to assume the risk of variances between the actual conditions and those conditions shown or represented in the RFP document.
2. FIT reserves the right to require a pre-RFP site inspection or a pre-RFP meeting or both.

C. NO ORAL STATEMENTS:

1. FIT will not be bound by any oral statement or representation in connection with the RFP or resulting Contract(s).
2. Any changes to the RFP document required by FIT shall be in writing and shall be issued by the FIT Purchasing Department to every entity that requested a copy of the RFP.

D. APPROVED EQUIVALENTS:

1. Unless otherwise specified, catalog, brand names or manufacturers references are descriptive only, and indicate type and quality desired.
2. Contractors may submit proposed equivalents of like nature and quality unless the RFP expressly states otherwise.
3. When proposing equivalents, Contractor shall indicate manufacturer and brand or trade name and shall submit with the RFP technical specifications and other information sufficient to assist FIT in making the determination of equivalency.

E. SAMPLES:

1. Samples, if requested, shall be furnished free of expense to FIT and marked with Contractor's name and address.
2. FIT will not be obligated to preserve or protect such samples.
3. Upon written request of Contractor, FIT will return samples to Contractor, at Contractors expense, that are not consumed during examination.

F. RFP SECURITY: N/A

1. Unless the Specifications state otherwise, Contractors shall provide RFP security in the form of either a RFP deposit or a RFP bond, at Contractors option.
2. The RFP deposit shall be in the form of a certified check made payable to the "Fashion Institute of Technology" in an amount of no less than two percent (2%) of the total RFP price.
3. The RFP bond shall be in an amount no less than ten percent (10%) of the total RFP price.

G. CONTRACTOR AFFIRMATION: By signing the RFP, Contractor certifies that:

1. Contractor is of lawful age and the only one interested in the RFP or transaction;
2. No person, firm or corporation other than Contractor has any interest in the RFP, the contract proposed to be let or the transaction involved;
3. No public officer or employee whose salary is payable in whole or in part by FIT, the City or the State is directly or indirectly interested in the RFP, or in the goods, services, supplies, equipment or labor which may be related to the RFP; and
4. Contractor is not in arrears to FIT, the City or the State upon a debt, contract or taxes, and is not in default as surety or otherwise upon any obligation to any of them.

H. NON-COLLUSIVE RFP CERTIFICATION:

1. By submission of its RFP, Contractor, and each person signing on behalf of Contractor, certifies, and in the case of a joint RFP each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:
 - a. The prices in the RFP have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Contractor or with any competitor;
 - b. Unless otherwise required by law, the prices which have been quoted in the RFP have not been knowingly disclosed by Contractor and will not knowingly be disclosed by Contractor prior to opening, directly or indirectly, to any other Contractor or to any competitor; and
 - c. No attempt has been made or will be made by Contractor to induce any other person, partnership or corporation to submit or not to submit a RFP for the purpose of restricting competition.
2. A RFP shall not be considered for award nor shall any award be made where (1)(a), (b) and (c) above have not been complied with; provided, however, that if in any case Contractor cannot

make the foregoing certification, Contractor shall so state and shall furnish with the RFP a signed statement which sets forth in detail the reasons therefore.

3. The fact that Contractor has performed any of the following:
 - a. Established public price lists, rates or tariffs covering items being procured;
 - b. Informed prospective customers of proposed or pending publication of new or revised price lists for such items; or
 - c. Sold the same items to other customers at the same price being RFP does not constitute, without more, a disclosure within the meaning of (1)(b) above.

I. CONFIDENTIALITY:

If Contractor believes that any information in its RFP or proposal constitutes a trade secret or should otherwise be treated as confidential and wishes such information not to be disclosed if requested pursuant to the New York State Freedom of Information Law (Article 6 of the Public Officers Law), Contractor shall submit with its RFP or proposal a separate letter specifically identifying page number(s), line(s) or other appropriate designation(s) containing such information; explain in detail why such information is a trade secret; and formally request that such information be kept confidential. Such information must be easily separable from the rest of the RFP or proposal. A request that an entire RFP or proposal be kept confidential will not be considered. Failure by Contractor to submit such a letter with its RFP or proposal identifying trade secrets shall constitute a waiver by Contractor of any rights it may have under FOIL.

J. PRICES:

1. Contractors shall price per unit shown. Unit prices shall govern in the event of extension errors.
2. Prices shall include transportation and delivery charges to FIT
3. RFP prices shall be held firm for ninety (90) days from the RFP due date.
4. The price for the goods shall be no higher than the lowest price charged to Contractors customers who take delivery on substantially similar amounts under similar conditions during the same period of time. If before delivery of the goods, Contractor offers to sell such goods to such customers at a price lower than specified on this RFP, Contractor shall reduce the price charged to FIT to reflect such lower price or, if FIT has paid for the goods, Contractor shall refund to FIT the difference between the higher price paid by FIT and the lower price charged to other customers.

K. NO SALES TAX:

FIT is exempt from the payment of State and City sales tax; therefore, all prices quoted shall not include such tax. Sales tax exemption forms may be obtained from the FIT Purchasing Department.

L. RFP WITHDRAWAL:

1. Contractors may withdraw RFPs at any time before the RFP opening.
2. After the RFP opening, Contractors may withdraw RFPs only after the expiration of ninety (90) days and before any actual award.

3. RFP withdrawals must be in writing.
4. In the event of an RFP mistake, a Contractor may withdraw its RFP before the award of the Contract or within three (3) days after the opening of the RFP, whichever period is shorter. Contractor shall furnish credible evidence that its RFP mistake was a clerical error as opposed to a judgment error. FIT will determine, upon objective evidence and pursuant to law, whether Contractor shall be permitted to withdraw its RFP.

M. TIE RFP'S:

Tie RFPs will be awarded in FIT's absolute discretion based on its determination of FIT's best interest.

N. CONTRACTOR RESPONSIBILITY:

In determining whether a Contractor is responsible, FIT may consider experience, business references, integrity of the organization and its management, past performance, business and/or financial capabilities and/or capacity and technical skills.

O. RFP REJECTION:

1. FIT may reject an RFP if:
 - a. The RFP is not responsive to the requirements of the RFP;
 - b. Contractor does not provide information or documents required;
 - c. Contractor does not submit the RFP security as required;
 - d. Contractor misstates or conceals any material fact in the RFP;
 - e. The RFP is conditional;
 - f. The RFP contains prices that are unbalanced; or
 - g. FIT determines that Contractor is not responsible in accordance with law and FIT regulations.
2. FIT reserves the right to reject all RFPs if it is in the best interest of FIT to do so.

P. AWARD OF CONTRACT:

1. Award shall be made to the highest score of Evaluation Criteria Contractor pursuant to law and FIT regulations and in accordance with section V "Evaluation Criteria" hereinabove.
2. FIT reserves the right to waive technicalities in an RFP if it is in the best interest of FIT to do so.
3. By submission of its RFP, Contractor represents that it is willing and able to enter into an agreement with FIT (the "Contract" upon the terms, conditions and specifications contained herein.
4. The Contract shall be signed by the successful Contractor after the award is made. The successful Contractor shall execute the Contract within ten (10) business days of the award. FIT will retain

the RFP security as liquidated damages in the event the successful Contractor fails to execute the Contract within this time period.

5. All contracts awarded by FIT shall be executory only to the extent of funds available.

Q. GOVERNING LAW:

1. This RFP shall be construed in accordance with the laws of the State of New York without regard to conflict of law provisions, except if the federal supremacy clause requires otherwise.
2. Any action arising from this RFP shall be brought in the federal or state courts located in the State of New York and in the County of New York.
3. Contractor consents to the exercise by the courts of the State of New York of personal jurisdiction over it concerning any matter arising out of or in connection with this RFP.

CONTRACT TERMS AND CONDITIONS FOLLOW

FASHION INSTITUTE OF TECHNOLOGY

CONTRACT TERMS AND CONDITIONS

A. PERFORMANCE:

1. Contractor shall deliver the goods or perform the work of the Contract subject to all relevant federal, state and local laws.
2. Contractor shall provide copies of all permits, licenses and certificates required for performance of the work within ten (10) days of FIT's written request.
3. When Contractor, its employees, subcontractors and agents are on the FIT campus, they shall be subject to applicable FIT rules and regulations.
4. Contractor shall protect the work site from damage and shall repair at its own cost any damage to property caused by Contractor, its employees, subcontractors or agents.
5. Upon completion of the work of the Contract, Contractor shall leave the work site in a neat and clean condition.

B. WAGE AND HOUR PROVISIONS:

1. Although the work of the Contract is not "public work" as defined in the Labor Law of the State of New York, FIT intends that all applicable provisions of the Labor Law be carried out in the performance of the work.
2. Neither Contractor's employees nor the employees of its subcontractors shall be required or permitted to work more than the number of hours or days stated in the Labor Law.
3. Contractor and its subcontractors shall pay at least the prevailing wage rate and pay or provide the prevailing supplements in accordance with the Labor Law.

C. DELIVERY:

1. Contractor shall not be responsible for delays or failures of performance arising out of causes beyond the reasonable control of Contractor and without the fault or negligence of Contractor including, but not limited to, acts of God or of the public enemy, fires, strikes or freight embargoes. Contractor shall immediately notify FIT in writing of any cause that may delay delivery.

D. PACKAGING:

1. Goods shall be carefully packed in a commercially reasonable manner.
2. Contractor shall bear all risk of loss or damage in transit. In the event that any goods are damaged in transit, Contractor shall promptly replace such goods upon written notification from FIT.

- E. TOXIC SUBSTANCES – MATERIAL SAFETY DATA SHEETS:** Pursuant to Article 28 of the Labor Law of the State of New York, any manufacturer, importer, producer or formulator of any toxic substance sold for use within the state must provide, upon request, specific information concerning the health hazards and proper handling of such substance. To meet its obligations under the law, FIT requires that Contractor submit prior to issuance of a PO or at the time of delivery a Material Safety Data Sheet for any toxic substance or product containing a toxic substance to be provided pursuant to the Contract.

F. CONTRACT QUANTITIES:

1. FIT will indicate in the Specifications whether this is a requirements contract. Estimates of goods or services for a requirements contract shall be used only for RFP analysis and evaluation and not as a guarantee and shall not be incorporated or otherwise read into this Contract other than for such limited purposes. The quantities actually required by FIT may be more or less than estimated.
2. If this is not a requirements contract, FIT reserves the right to increase or decrease the quantity of goods or services up to twenty percent (20%) from those set forth in the Specifications at the unit prices established by contract.

G. CHANGES IN SCOPE OF WORK:

1. FIT reserves the right to make reasonable changes within the general scope of the Contract and not materially affecting the substance thereof, including additions, deletions or other revisions to the work.
2. Any change in work shall be made in writing by FIT, and the Contract price shall be adjusted accordingly.
3. Increases or decreases in the Contract price required by a change in work shall be determined at FIT's option:
 - a. By applying the applicable unit prices established by the Contract or
 - b. By estimating the fair and reasonable cost of the change in work.

H. INSPECTION OF GOODS:

1. Acceptance of the goods is subject to FIT's inspection and approval.
2. At FIT's option and without prejudice to other remedies at law or in equity, goods failing to meet FIT's inspection and approval may be accepted subject to an equitable adjustment in price or returned at Contractor's risk and expense.
3. Contractor shall remove rejected goods within five (5) days of notification. Rejected goods left longer than five (5) days shall be deemed abandoned, and FIT shall have the right to dispose of them as its own property.
4. If Contractor fails to promptly replace rejected goods with goods conforming to the Specifications, upon notification, FIT may cancel the Contract and obtain the goods from other sources.
5. Contractor shall reimburse FIT promptly for replacement costs in excess of the price established by Contract. If the replacement cost is less than the Contract price, Contractor shall have no claim for the difference.

I. INSURANCE REQUIREMENTS:

1. Before commencing work on the FIT campus, Contractor shall procure at its own expense all of the insurance required under this section and shall maintain such insurance until the work of the Contract is completed or as specified.
2. Required insurance shall be procured from companies licensed to do business in the State of New York.
3. Contractor shall submit certificates of insurance required under this section to the FIT Purchasing Department before commencing work on the FIT campus.

4. Types and minimum limits of insurance:
 - a. Workers' compensation insurance as required by New York State Law.
 - b. Employer's liability insurance with a limit of not less than \$500,000.
 - c. Comprehensive general liability with the following minimum limits: **N/A**
 - \$2,000,000 general aggregate
 - \$1,000,000 per occurrence
 - \$1,000,000 personal injury/advertising injury
 - \$2,000,000 products/completed operations aggregate
 - \$10,000 per person medical payments

Evidence of completed operations coverage shall be provided for a minimum of two (2) years following completion of the work described in this Contract.

Coverage shall include Broad Form Property Damage and Contractual Liability.

The Certificate of Insurance shall evidence the following:

The Fashion Institute of Technology, its auxiliary corporations, the State University of New York, the New York City Department of Education and the City and State of New York shall be named as Additional Insured's for coverage pursuant to items (a) through (c) above.

- d. Comprehensive automobile liability insurance including non-owned and hired auto coverage – \$1,000,000 combined single limit **N/A**
 - e. Umbrella/excess liability insurance with limits of: **N/A**
 - \$2,000,000 per occurrence
 - \$2,000,000 general aggregate
 - f. Errors and omissions professional liability coverage with limits of: **N/A**
 - \$1,000,000 per occurrence
 - \$3,000,000 general aggregate
5. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party, nor shall coverage be reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to FIT.
6. This Contract shall be void and of no force and effect unless Contractor shall provide and maintain coverage during the life of this Contract for the benefit of its employees who are required to be covered by the provisions of the Workers' Compensation Law.
7. Contractor waives any right of recovery against FIT and additional insured for any loss or damage covered by any policy of insurance maintained by Contractor in connection with the work of the Contract. Contractor shall obtain from its insurer under any such policy a waiver of all right of recovery by way of subrogation against FIT and additional insured's in connection with any claim of loss or damage covered by such policy.

J. **PERFORMANCE AND PAYMENT BONDS:** If required in the Specifications, Contractor shall furnish, at no additional cost to FIT, performance and/or payment bonds in the principal sum of the value of the work to be performed under the Contract and issued by a surety company licensed to do business in the State of New York. Such bonds shall be maintained in full force and effect during the term of the Contract and shall insure the full and faithful performance by Contractor of the terms and conditions of the Contract. N/A

K. **CONTRACTOR'S WORKERS:**

1. Contractor shall provide competent workers for the performance of the work of the Contract.
2. If, in FIT's reasonable opinion, any worker employed by Contractor is not competent or otherwise not acceptable, Contractor shall promptly replace such worker.
3. Contractor shall not permit any labor, materials or means whose employment or utilization may tend to or in any way cause or result in strikes, work stoppages, delays, suspensions of work or similar troubles by workers employed by Contractor, its subcontractors or agents, or by any of the trades working in or about the buildings and premises where work is being performed under the Contract, or by other contractors, their subcontractors or agents pursuant to other contracts. Any violation by Contractor of this requirement may be considered as proper and sufficient cause for declaring Contractor to be in default, and for FIT to action against Contractor as it deems proper, including cancellation of the Contract.

L. **WORK FOR HIRE:**

1. Any copyrightable works created by Contractor during the work of this Contract shall be deemed "work for hire", and FIT will hold all right, title and interest in this work for hire.
2. Contractor shall agree to give FIT all assistance reasonably required to protect any right, title or interest in the work created.

M. **WARRANTIES:**

1. Contractor warrants that any goods shall be new, unused and of current production; merchantable; free from defects in materials, construction and workmanship; in conformity with specifications or samples; delivered free of any security interest or other encumbrance; free of any claim of infringement; fit for their intended use; and conveyed with good and marketable title.
2. Contractor shall take all steps necessary to ensure that manufacturer's warranties shall run directly to FIT in addition to Contractor or its subcontractor. These warranties shall survive the expiration or termination of this Contract.

N. **CONTRACTOR'S GUARANTEE:**

1. Contractor shall guarantee all goods provided to FIT against defects in materials, construction and workmanship and shall repair or replace without cost to FIT any goods that become defective or inoperable within one (1) year from date of FIT's acceptance.
2. If Contractor fails to repair or replace defective goods within thirty (30) days from the date of notice, FIT will have the right to have the goods repaired or replaced by others and charge the cost of the repair or replacement to Contractor.
3. Contractor shall not be responsible for defects caused by FIT's improper or negligent use provided that Contractor has previously instructed FIT in the proper use of the goods.

O. RENEWAL OF CONTRACT:

1. Unless permitted by the Specifications, renewal of the Contract shall not be allowed.
2. Renewal, if permitted, shall be in the best interest of FIT and shall be subject to the same terms and conditions contained in the original Contract.
3. Upon termination of the Contract or any renewal thereof and pursuant to FIT's written request, Contractor shall provide services as specified in the Contract for a period not to exceed three (3) months at the same terms and conditions as during the term of the Contract.

P. CANCELLATION OF CONTRACT:

1. If Contractor fails to deliver the goods or perform the work pursuant to the Specifications or breaches any provision of the Contract, FIT may terminate this Contract upon written notice to Contractor. Said notice shall contain the reasons for FIT's intention to terminate the Contract upon a date specified by FIT and give Contractor a reasonable opportunity to cure. If Contractor fails to cure the failure or breach in a manner satisfactory to FIT within the time provided by FIT, the Contract shall terminate on the date specified by FIT. FIT will thereupon have the right to take over the work of the Contract and to charge Contractor for all expenses incurred relating to the completion of the Contract and liquidated damages, if any, as set forth in the Specifications. If these expenses, including liquidated damages, exceed the amount that would have been due to Contractor, Contractor shall pay FIT the excess. If these expenses, including liquidated damages, are less than the amount that would have been due to Contractor if the Contract had not been canceled, Contractor shall forfeit any claim to the difference.
2. FIT reserves the right to cancel a portion of the work of the Contract and to direct Contractor to continue to perform the remaining work pursuant to the terms of the Contract.
3. The foregoing rights are in addition to any other remedies provided herein or provided by law or in equity.

Q. ADDITIONAL GROUNDS FOR CANCELLATION OF CONTRACT:

1. In addition to the grounds set forth in the preceding paragraph, upon the refusal of a person to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof, or of a public authority; or to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath; such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling or submitting RFPs to or receiving awards from or entering into any contracts with FIT, for goods, work or services, for a period of five (5) years after such refusal.
2. Any and all contracts made with FIT by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by FIT without incurring any penalty or damages on account of such cancellation or termination but any monies owing by FIT for goods delivered or work done prior to the cancellation or termination shall be paid.

R. INSOLVENCY:

If Contractor becomes insolvent or its property or business is placed in the hands of a receiver or trustee, FIT will have the right, at its sole election, to treat such occurrence as a breach of the Contract and to terminate the Contract upon five (5) days' written notice to Contractor.

S. TERMINATION FOR CONVENIENCE:

FIT reserves the right to terminate this Contract for convenience upon thirty (30) days' written notice to Contractor. FIT will pay Contractor on a prorated basis for any goods delivered and accepted or work performed pursuant to the Contract up to the date of termination.

T. LIQUIDATED DAMAGES:

Contractor acknowledges that failure to complete performance within the time specified will cause damage and loss to FIT, the precise extent of which shall be difficult to calculate or ascertain; consequently, FIT reserves the right to assess liquidated damages as detailed in the Specifications against Contractor for each day's delay until completion of performance and acceptance by FIT.

U. PAYMENT AND RELEASE:

1. Contractor shall provide complete and accurate billing invoices which shall include the purchase order number assigned by FIT. FIT reserves the right to request reasonable additional supporting documentation.
2. FIT will affect prompt payment in accordance with FIT procedures and practices.
3. When partial or progress payments are permitted and subject to FIT's inspection and approval of the work, Contractor may submit requisitions for partial or progress payments for work performed and/or goods furnished as of the date of the requisition, less any amount previously paid to Contractor.
4. Contractor's submission of a requisition for partial or progress payments and FIT's payment thereof shall not release Contractor from any obligation arising under the Contract.
5. Contractor's acceptance of final payment under this Contract shall operate as and be a release of FIT from all claims by and any liability to Contractor for anything done or furnished under the provisions of this Contract.

V. INDEMNITY:

1. Contractor shall indemnify and hold harmless FIT, the State University of New York, the Board of Education of the City of New York, and the City and State of New York, their trustees, officers, employees, and agents (the "Indemnified Parties", from any and all claims, damages, liabilities, costs and expenses, including, without limitation, fees and disbursements of counsel incurred by the Indemnified Parties in any action or proceeding between any of the Indemnified Parties and Contractor or between any of the Indemnified Parties and any third party arising out of the delivery or goods or performance of work of this Contract, or by or on account of any act or omission of Contractor, its employees, subcontractors or agents, during the work of this Contract.
2. This provision shall survive the expiration or termination of the Contract.

W. INDEPENDENT CONTRACTOR:

1. Contractor's status shall be that of an independent contractor and not that of an employee or agent of FIT.
2. All persons furnished by Contractor for the work of this Contract shall at all times be deemed employees or agents of Contractor and not employees of FIT, and Contractor shall be solely responsible for their work, conduct, direction and compensation.

X. SUBCONTRACTING:

1. Subcontracting is not permitted except as provided in the Specifications.
2. Where subcontracting is permitted, Contractor shall not subcontract any portion of the Contract without the prior written consent of FIT.
3. Any subcontract of all or part of this Contract without the express written consent of FIT shall be null and void, and FIT will have the right to cancel the Contract.
4. Contractor's use of subcontractors shall in no way affect Contractor's responsibilities or liabilities under the Contract or its obligation to deliver the goods or complete the work of the Contract in accordance with its terms and conditions.
5. In any subcontracts relating to the work of this Contract, Contractor shall insert appropriate provisions binding subcontractors to applicable terms and conditions of the Contract.

Y. RECORDKEEPING:

Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (collectively, the "Records"). The Records shall be kept for the balance of the calendar year in which they were made and for six (6) additional years after the completion or cancellation of the Contract. FIT and any other entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

Z. ASSIGNMENT:

Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the Contract, or of its right, title or interest therein without the prior written consent of FIT.

Failure to comply with this provision shall be grounds for revocation and annulment of the Contract, and FIT shall be relieved and discharged from any and all liability and obligations growing out of the Contract to Contractor and to any person or corporation to which the Contract has been assigned, transferred, conveyed, sublet or otherwise disposed of.

AA. PERIOD OF LIMITATION:

No action arising from this Contract shall be maintained against FIT unless such action is commenced within one (1) year from the date when the cause of action accrued or one (1) year from the date of termination of the Contract, whichever is earlier.

BB. NONWAIVER:

Waiver by FIT of any breach or right under this Contract shall not operate or be construed as a waiver of any other or subsequent breach or right of this Contract.

CC. GOVERNING LAW:

1. This Contract shall be construed in accordance with the laws of the State of New York without regard to conflict of law provisions, except if the federal supremacy clause requires otherwise.

2. Any action arising from this Contract shall be brought in the federal or state courts located in the State of New York and in the County of New York.
3. Contractor consents to the exercise by the courts of the State of New York of personal jurisdiction over it concerning any matter arising out of or in connection with this Contract.

DD. ENTIRE AGREEMENT:

This Contract constitutes the entire agreement between the parties. No statement, condition, understanding or representation, either oral or written, shall be deemed to exist or to bind the parties or to vary any of the terms and conditions herein.

This Contract shall not be changed, modified or altered in any manner except by written agreement between the parties executed in the same manner as this Contract.

EE. AFFIRMATIVE ACTION:

New York State Executive Order No. 6, regarding equal employment opportunities, states:

It is the policy of the State of New York that equal opportunity be assured in the State's personnel system and affirmative action provided in its administration, in accordance with the requirement of the State's Human Rights Law and the mandate of Title VII of the Federal Civil Rights Act, as amended. Accordingly, Executive Order 11246, Section 503 and 4212; Executive Order 13201, it is the responsibility of the State's Department of Civil Service to enforce the State's policy ensuring full and equal opportunity for minorities, women, disabled persons and Vietnam era veterans at all occupational levels of State government.

In keeping with this policy, FIT mandates compliance internally and for all organizations with which it conducts business. Contractor shall include its organization's affirmative action policy and agree that all presentations and materials will be free from racial, religious or sexual bias.

FF. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:

FIT encourages the submission of RFPs or proposals by certified minority and women-owned business enterprises.

GG. CENTURY COMPLIANCE WARRANTY:

New York State 2000 warranty compliance shall apply to all contracts as promulgated by the New York State Office of General Services. Contractor warrants that the products to be provided or systems to be developed are Century Compliant. "Century Compliant" means that the product: (a) is able to process date data accurately- including date data century recognition calculations that accommodate same-century and multi-century formulae and date values (including leap year factors) and date data interface values that reflect the century when used either in a standalone configuration or in combination with other century compliant products used by FIT; and (b) will not abnormally terminate its function or provide or cause invalid or incorrect results due to incompatibility with the calendar year. In addition to any other warranties applicable to this Contract or any remedies otherwise available to FIT, Contractor agrees to promptly repair or replace any products furnished that are not century compliant, provided FIT gives notice within a reasonable time following discovery of such failure.

HH. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970:

Contractor warrants that any and all equipment and material delivered for or to FIT and/or any and all work performed for FIT on its premises shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time, including all regulations adopted pursuant to such Act, and shall comply with all requirements of any applicable health or safety statute or regulation of any state or local

government agency having jurisdiction in the location to which such equipment is to be shipped, or such work is to be performed, pursuant to this Contract. The foregoing provision shall not be deemed to limit any other duty of Contractor to comply with statutes, orders, rules or regulations.

II. DATA SECURITY FOR STUDENT RECORDS

1. **Protection of Confidential Data:** Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2) and with the terms set forth below. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the College may use the information, but only for the purposes for which the disclosure was made.
2. **Definition: Covered data and information (CDI)** includes paper and electronic student education record information supplied by the College, as well as any data provided by College's students to the Contractor, if any.
3. **Acknowledgment of Access to CDI:** Contractor acknowledges that the Contract allows the Contractor access to CDI.
4. **Prohibition on Unauthorized Use or Disclosure of CDI:** Contractor agrees to hold CDI in strict confidence. Contractor shall not use or disclose CDI received from or on behalf of the College (or its students) except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by the College. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.
5. **Return or Destruction of CDI:** Upon termination, cancellation, expiration or other conclusion of the Contract, Contractor shall return all CDI to the College, or if return is not feasible, destroy any and all CDI. If the Contractor destroys the information, the Contractor shall provide the College with a certificate confirming the date of destruction of the data.
6. **Remedies:** If the College reasonably determines in good faith that the Contractor has materially breached any of its obligations under this Contract, the College, in its sole discretion, shall have the right to require the Contractor to submit to a plan of monitoring and reporting; provide the College with a fifteen (15) day period to cure the breach; or terminate the Contract immediately if cure is not possible. Before exercising any of these options, the College shall provide written notice to the Contractor describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Contractor improperly disclosed personally identifiable information obtained from the College's education records, the College may not allow the Contractor access to education records for at least five years.
7. **Maintenance of the Security of Electronic Information:** Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of the College or its students. These measures will be extended by contract to all subcontractors used by Contractor.
8. **Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information:** Contractor shall, within one day of discovery, report to the College any use or disclosure of CDI not authorized by this Contract or in writing by the College. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the College.
9. **Indemnity:** Contractor shall defend and hold the College harmless from all claims, liabilities, damages, or judgments involving a third party, including the College's costs and attorney fees, which arise as a result of Contractor's failure to meet any of its obligations under this Contract.

**Full Terms and Conditions of The Contract to Be Set
Forth in An Agreement**

TO BE SIGNED ONLY UPON AWARD OF CONTRACT

TITLE: RFP # C1661 – Undergraduate Commencement Catering Services

In witness whereof, the parties have executed this Contract: The amount of this
Contract is _____ Dollars
(\$ _ _ _ _)

FOR FIRM:

Signature

Print Name and Title

ACKNOWLEDGEMENT OF PERSON EXECUTING FOR CONSULTANT

State of New York
County of _____)
SS:

On this day of _____ 20____, before me personally came _____ to
me known, who being by me duly sworn did depose and say that s/he resides at - - - - -;
that s/he is the _____ of _____, the corporation described
in and which executed the above instrument; and that s/he signed her/his name thereto by order of the
Board of Directors of said corporation.

Notary Public

FASHION INSTITUTE OF TECHNOLOGY:

Sherry F. Brabham, VP Finance & Administration

Date