



NOTICE TO ALL FIRMS

Date: May 23, 2022
To: All Prospective Bidders
From: Walter Winter, Director of Procurement Services
Re: Addendum Number 4
RFP C1401 – Architectural and Related Services

Notes:

- 1) **The RFP due date has been changed to June 13, 2022, 12:00 PM. Your RFP must be received by June 13, 2022, on or before 12:00 PM.**

Hand delivered bids shall go to: 333 Seventh Ave, 16th Floor, New York, NY 10001, between West 28th & West 29th Street.

Mailed bids shall be sent to: FIT Purchasing, 227 West 27th Street, New York, NY 10001.

- 2) See attachment 3A below.
- 3) See Revised Contract Terms & Conditions. See attached.

Questions and Answers:

Q1. Which sub-consultants are required for this proposal and what materials are needed from them?

A1. **FIT needs the rates & staff qualifications for all positions on Attachment 3.**

Q2. Would consideration be given to MBE firms who are NYC-SBS certified or must they be certified with NYS only?

A2. **FIT encourages minority and women business enterprise participation in this project by contractors, subcontractors and suppliers, and all bidders are expected to cooperate with that commitment.**

Q3. Under the 3-year term is there a potential for projects to fall into any of the cost ranges outlined in the Design Curve Fee?

A3. **Yes.**

Q4. Is there an anticipated total dollar amount of proposed projects during the term of this agreement?

A4. **No. Total varies.**

Q5. Are proposed hourly rates allowed to be adjusted on a percentage basis per year over the three-year contract?

A5. **Contract prices must be held for at least one year. FIT will allow increase an increase at no more the 3% per Cost of Living on each year's anniversary.**

- Q6. The RFP states that FIT is ONLY accepting electronic bids for the project, yet at the walkthrough it was said to submit 4 copies and 1 USB drive. Which is correct?
- A6. This was answered in Addendum 1. FIT is no longer requesting scanned bids to be emailed. Each proposal must include four (4) hard copies of your proposal and a digital copy on a flash drive in a sealed envelope.
- Q7. On page 9 of the RFP, it mentions “Environmental studies may include permit investigations and the completion of permit applications, as required. Possible lead paint, contaminated soil, and asbestos/PCB abatement studies/analyses and topographic surveys and subsurface explorations may be included. “There is no listing for environmental or hazmat engineer on Attachment 3 Hourly Rates. Assuming we should include the qualifications of an environmental engineer, where should we put their hourly rates?
- A7. See Attachment 3A, included with Addendum 4.
- Q8. On page 29, Appendix A Scope of Work & Design Assignments, under Typical Architectural design assignments, you list IT/Data infrastructure design, Audio Visual design services & Specialized security systems. These disciplines are not listed on Attachment 3 Hourly Rates. Assuming we should include the qualifications of an AV/IT/Security consultant, where should we put their hourly rates?
- A8. See Attachment 3A, included with Addendum 4.
- Q9. On Attachment 2: Design Fee Curve it says "The Responder shall submit Attachment 2 Design Fee Curve in a separate, sealed interior envelope labeled “Pricing Information” at the same time as the Response.” Since FIT is only accepting electronic bids, is a separate hard copy submission still required?
- A9. No. This should now be part of your hard copy.
- Q10. Can QRWI certification substitute for QEWI certification?
- A10. No, QRWI is for retaining walls, not façade.
- Q11. Pages 46 – 52, which is the Contract Terms and Conditions, is written for a Construction Contractor not a Professional Consultant. For Example, Page 47, # 4b. Employers Liability Insurance. Typically, our Professional Liability Insurance requirements would be stated, which we have to meet. E3 is specifically written for a Construction Contractor. P1 - Subcontracting is not permitted except as provided by the Specifications. We are required by the RFP to have subconsultants. Professionals don't have subcontractors. Contractors have subcontractors. Y. MBE/WBE and SDVOB, does the College have specific % goals that are required to be met? Z. does not apply to an Architect, as we have no contact with Student Records. Please advise.
- A11. Attached please find a revised RFP Terms & Conditions, and a revised Contract Terms & Conditions. Consultant is in place of Contractor. Professional Insurance requirements added, sample attached. And please refer to answer to Q2.
- Q12. Page 42 RFP: A1. A2. Requirements indicate that we are to submit the complete RFP document, consisting of RFP Terms and Conditions, Contract Terms and conditions and Specifications. There are no specifications in a professional's contract. What do you want us

to submit in place of specifications? Page 43 G1. Prices shall be held firm for ninety (90) days from the RFP due date. This is written for a contractor not a professional. What happens after (90) days? RFP Rejection page 44, Kc. Contractor does not submit eh RFP security as required. What security and how much? It's not written for a Professional. This I believe refers to a bid bond. If not, please state the dollar amount.

A12. Yes, RFP prices shall be held firm for 90 days and then one year upon signing contract.

Q13. Per the RFP Architectural Design Assignments may include Environmental Design Services, IT/Data Infrastructure Design, Audiovisual Design Services and Specialized Security Systems. Should consultants for these services be included in the proposal and added to Attachment 3?

A13. See attachment 3A included with Addendum 4.

Q14. Are there required percentages for M/WBE and SDVOB participation?

A14. See response to Q2.

Q15. Can a Prime also be a sub-consultant on another team?

A15. Yes.

Q16. Pages 54 60, 2020 Building Code of New York State, Compliance Review Form. Is this for Reference only or do you want us to indicate the various types of work with which we are familiar? There is no place to sign and date.

A16. The Compliance Review Form was just for reference.

Q17. What is the required Professional Liability Insurance amount required?

A17. See Revised Contract Terms & Conditions. Sample attached.

Q18. Should Proposal Requirements Section C. "Similar Experience" be formatted in a list similar to Attachment B "Contractor Reference Sheet" or as a written-out statement?

A18. Both.

Q19. When listing collaborating firms, is it necessary to include each firm's Company Overview, Staff Qualifications, and Similar Experience?

A19. Yes.

Q20. Regarding this requirement stated in the RFP:

Bidder shall provide a minimum of five (5) references of contracts of similar scope and nature entered into within the past two (2) years.

Can the references be from various task orders within a single contract within the past two years? The request reads as if the consultant would need to have been awarded five similar new requirements *contracts* in a two-year period and completed sufficient work to receive an informed letter of reference from 5 individuals. Would F.I.T. considerer broadening the duration or otherwise widening the pool of references?

- A20. FIT will accept references from the past 5 year period. FIT cannot be used as a reference.
- Q21. Given that architects cannot retain special inspections consultants per DOB requirements, please confirm whether to include this requirement.
- A21. Requirement confirmed.
- Q22. Does F.I.T. have an M/WBE contracting goal?
- A22. Please see answer to Q2.
- Q23. Please confirm whether surveyor, geotechnical, expediting, and special inspection (if included) services are outside of the Design Fee curve?
- A23. These Professional Services group should not be included in the Design Fee.
- Q24. In which section should Attachment B: Contractor Reference Sheet be included?
- A24. This must be included in your bid package.
- Q25. In which section should subconsultant firm and project information be included?
- A25. This must be included in your bid package.
- Q26. Does the request for multidisciplinary capabilities (C.3.) refer to the prime consultant or does it include the subconsultant team?
- A26. As per Scope Of Work, Section C – list the required abilities and disciplines required. As per Section VIII, all Technical Classification are required from each firm.
- Q27. Should subconsultants complete Attachment B: Contractor Reference Sheet?
- A27. Yes.
- Q28. Do proposers need to structure their submission according to RFP Section “V. Proposal Requirements”—For instance for D.1. i, ii, iii, D.2... etc., can these be combined in one section?
- A28. Follow the format, do not combine.
- Q29. For tabs, do these need to be more than A, B, C and D (i.e. A.1., A.2., etc.)
- A29. Follow the format.
- Q30. What is your annual projected construction budget?
- A30. This varies year to year.
- Q31. What is the ratio /percentage budget for architectural renovations compared to MEP equipment repair/upgrade?

- A31. This varies year to year.
- Q32. Do all FIT facility belong to you or are they leased?
- A32. FIT has 5 Academic Buildings, with a new one currently under construction and F.I.T. Student Housing has 4 dormitories. FIT leases spaces at 236 West 27 St. & 333 Seventh Ave.
- Q33. Any new or major expansions scheduled for the next 3 years?
- A33. New or major expansions are not anticipated for the next 3 years.
- Q34. When was the last cycle local law filled for each building?
- A34. Each building has its own cycle and can be found in the DOB system.
- Q35. How many buildings are scheduled for local law filing in the next 3 years?
- A35. See answer to Q35.
- Q36. When were the building roofs last replaced?
- A36. Dubinsky, Pomerantz, Goodman, and CoEd has relatively new roofs.
- Q37. How many roofs are scheduled to be replaced in the next 3 years?
- A37. Alumni Hall.
- Q38. Are there any specific M/WBE goals for this project?
- A38. Please see response to Q2.
- Q39. Please confirm this is not just for the residential buildings as stated on page 7 of the RFP.
- A39. Please see response to Q33.
- Q40. Please clarify if RFP A.1 (RFP page 11), A.4 (RFP page 12) and C.1 (RFP page 12) are referencing Attachment B.
- A40. Yes.
- Q41. Do the projects on Attachment B need to have been started in the past 2 years? Can we submit projects done within the last 5 years?
- A41. Please reference projects from the last (5) years.
- Q42. Please clarify if you would like Attachment 2 to be overnighted, as this submission is electronic or can it be included in our electronic submission.
- A42. As per Addendum 1: FIT is no longer requesting scanned bids to be emailed. Each proposal must include four (4) hard copies of your proposal and a digital copy on a flash drive. Bids shall

be enclosed in a sealed envelope, addressed to FIT. Please read Addendum 1 for full instructions.

Q43. Please confirm if Attachment A should be included with our submission.

A43. Yes.

Q44. Should environmental consultant be included in the proposal? It is listed in Appendix A but not included in hourly rates sheet.

A44. See attachment 3A, included with this addendum.

Q45. Should we include an AV/T consultant in our proposal.

A45. See attachment 3A, included with this addendum.

Q46. Attachment 3 list many subconsultant that may be part of various projects. It does not list Haz Mat for asbestos surveys, which are almost always required on all projects, filed at the Building Department. Do you want us to include their hourly rates? Also, you do not list IT/AV/Security consultants, which also are often required. Do you want us to include their rates?

A46. See attachment 3A, included with addendum 4.

Q47. It appears that the RFP almost asked the same thing in several places in terms of experience. See below:

1. **Attachment B Contractor Reference Sheet** - 5 references similar size and scope
2. **Section A Company Overview item 4:** A list of other educational or other large institutions and laboratories where similar projects have been completed. Include detailed information for a minimum of five (5) references.
3. **Section C: Similar Experience:**

1. List clients within the last five (5) years of a similar nature, which best demonstrate the firm's qualifications for the proposed work. For each client reference, include the following:

- i. Description and scope of projects.
- ii. Project start date and (expected) completion date.
- iii. Name of client, representative's name, title, address, phone number.

Is the goal for us to list the same projects in the response to each, or to list different, and more varied projects?

A47. At least 5 references similar in size and scope should be listed with contacts.

Q48. We understand that there is not a page limit to our proposal submission. Please confirm.

A48. No page limit.

Q49. On Page 8 of the RFP relative to bidder requirements there is reference to providing projects from the last (2) years. However, on page 12 there is reference to providing projects from the last (5) years. Please advise.

A49. Please reference projects from the last (5) years.

Q50. We understand that as part of the services the Contractor may need to retain a geotechnical engineer and surveyor. These services carry a disproportionate risk related to the fee, and directly relate to the Owner property. We would like to reserve the right to, in the development of the contract terms, review this risk element to be more proportional. Please confirm that this will be possible.

A50. No.

THIS ADDENDUM IS PART OF THE CONTRACT DOCUMENT AND SHALL BE INCLUDED WITH YOUR REQUEST FOR PROPOSAL SUBMITTAL. YOUR SIGNATURE BELOW WARRANTS THAT YOU UNDERSTAND THIS ADDENDUM AND THAT YOU HAVE MADE THE APPROPRIATE ADJUSTMENTS IN YOUR PROPOSAL AND CALCULATIONS.

Signature

Print Name and Title of Authorized Representative

Print Name of Company/Partnership/Individual

Date

Attachment 3A

HOURLY RATES

Maximum Hourly Rates for Compensation for Professional Services Rendered

Technical Classification	Direct Hourly Rate
Environmental Engineer	\$
AV/IT/Security Consultant	\$

All prices inclusive of overhead & profit. All classifications must be filled in. Failure to comply shall be grounds for rejection of your RFP.

Name of Firm (Responder)

Name of Authorized Responder Representative

Title

Signature

Date

Note: FIT will not sign any vendor contract, agreement or scope of work. FIT Bid, and Terms and Conditions apply. Vendor requirement for FIT to sign any document will be grounds for rejection. Vendor inclusion of any clarifications, exceptions or changes which are not in compliance with FIT Bid and Terms and Conditions will be grounds for rejection.

RFP TERMS AND CONDITIONS
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Fashion Institute of Technology

A. RFP Requirements:

1. Consultants 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 Consultants are not permitted to change or modify RFP Terms and Conditions, Contract Terms and Conditions and Specifications. All Consultants bid on the same terms and conditions.
3. Consultants 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:

1. Before submitting a RFP, Consultants are expected to examine typical areas on campus and its surroundings during the mandatory walk through. Consultants 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. Consultant Affirmation: By signing the RFP, Consultant certifies that:

1. Consultant is of lawful age and the only one interested in the RFP or transaction;
2. No person, firm or corporation other than Consultant 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. Consultant 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.

E. Non-Collusive RFP Certification:

1. By submission of its RFP, Consultant, and each person signing on behalf of Consultant, 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 Consultant 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 Consultant and will not knowingly be disclosed by Consultant prior to opening, directly or indirectly, to any other Consultant or to any competitor; and
 - c. No attempt has been made or will be made by Consultant 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 Consultant cannot make the foregoing certification, Consultant shall so state and shall furnish with the RFP a signed statement which sets forth in detail the reasons therefore.

F. **Confidentiality:** If Consultant 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), Consultant 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 Consultant to submit such a letter with its RFP or proposal identifying trade secrets shall constitute a waiver by Consultant of any rights it may have under FOIL.

G. **Prices:**

1. RFP shall include in its submission a reasonable breakdown of its proposed fee for the services to be rendered. Prices shall be held firm for ninety (90) days from the RFP due date.
2. **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.

H. **RFP Withdrawal:**

1. Consultants may withdraw RFPs at any time before the RFP opening.
2. After the RFP opening, Consultants 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 a clerical error by a Consultant, Consultant 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. Consultant shall furnish credible evidence that its error was a clerical in nature as

opposed to an error in judgement. FIT will determine, upon objective evidence and pursuant to law, whether Consultant shall be permitted to withdraw its RFP.

I. **Tie RFPs:** Should any two or more RFPs be submitted with exact bid totals; FIT shall have full discretion to make a determination as to which Consultant shall be awarded the RFP. Such determination shall be based on FIT's objective determination as to which Consultant / bid is in FIT's best interest.

J. **Consultant Responsibility:** In determining whether a Consultant 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.

K. **RFP Rejection:**

1. FIT may reject a RFP if:
 - a. The RFP is not responsive to the requirements of the RFP;
 - b. Consultant does not provide information or documents required;
 - c. Consultant does not submit the RFP security as required;
 - d. Consultant 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 Consultant is not responsible in accordance with law and FIT regulations.
2. FIT reserves the right to reject all RFPs submitted for this project if it is in the best interest of FIT to do so.

L. **Award of Contract:**

1. Award shall be made to the highest score of Evaluation Criteria Consultant pursuant to law and FIT regulations.
2. FIT reserves the right to waive technicalities in this RFP if it is in the best interest of FIT to do so.
3. By submission of its RFP, Consultant 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 Consultant after the award is made. The successful Consultant shall execute the Contract within ten (10) business days of the award.
5. All contracts awarded by FIT shall be executory only to the extent of funds available.

M. **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. Consultant 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
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A. Performance:

1. Consultant shall deliver the goods or perform the work of the Contract subject to all relevant federal, state and local laws.
2. Consultant shall provide copies of all licenses and certificates required for performance of the work within ten (10) days of FIT's written request.
3. When Consultant, its employees, subConsultants and agents are on the FIT campus, they shall be subject to applicable FIT rules and regulations.

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 Consultant's employees nor the employees of its subConsultants shall be required or permitted to work more than the number of hours or days stated in the Labor Law.
3. Consultant and its subConsultants shall pay at least the prevailing wage rate and pay or provide the prevailing supplements in accordance with the Labor Law.

C. Delivery:

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

D. 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.

E. Insurance Requirements:

1. Before commencing work on the FIT campus, Consultant 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 and authorized to do business in the State of New York.
3. Consultant shall submit certificates of insurance required under this section to the FIT Purchasing Department before commencing work on the FIT campus. This shall include Professional Liability of \$3,000,000 per claim and \$3,000,000 aggregate.
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 for bodily injury by accident; \$500,000 for bodily injury by disease – policy limit; \$500,000 for bodily injury by disease – each employee.
 - c. 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.

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 Consultant 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. Consultant waives any right of recovery against FIT and additional insured's for any loss or damage covered by any policy of insurance maintained by Consultant in connection with the work of the Contract. Consultant 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.

E. Consultant's Workers:

1. Consultant shall provide competent workers for the performance of the work of the Contract.

2. If, in FIT's reasonable opinion, any worker employed by Consultant is not competent or otherwise not acceptable, Consultant shall promptly replace such worker.
3. Consultant 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 Consultant, its subConsultants 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 Consultants, their subConsultants or agents pursuant to other contracts. Any violation by Consultant of this requirement may be considered as proper and sufficient cause for declaring Consultant to be in default, and for FIT to take action against Consultant as it deems proper, including cancellation of the Contract.

F. Work for Hire:

1. Any copyrightable works created by Consultant 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. Consultant shall agree to give FIT all assistance reasonably required to protect any right, title or interest in the work created.

H. 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, Consultant 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.

I. Cancellation of Contract:

1. If Consultant 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 Consultant. Said notice shall contain the reasons for FIT's intention to terminate the Contract upon a date specified by FIT and give Consultant a reasonable opportunity to cure. If Consultant 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 Consultant 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 Consultant, Consultant shall pay FIT the excess. If these expenses, including liquidated damages, are less than the amount that would have been due to Consultant if the Contract had not been canceled, Consultant 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 Consultant 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.

J. 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.

K. Insolvency: If Consultant 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 Consultant.

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

M. Payment and Release:

1. Consultant 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 effect 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, Consultant 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 Consultant.
4. Consultant's submission of a requisition for partial or progress payments and FIT's payment thereof shall not release Consultant from any obligation arising under the Contract.
5. Consultant'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 Consultant for anything done or furnished under

the provisions of this Contract.

N. Indemnity:

1. Consultant 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 Consultant 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 Consultant, its employees, subConsultants or agents, during the work of this Contract.
2. This provision shall survive the expiration or termination of the Contract.

O. Independent Consultant:

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

P. Subcontracting:

1. Subcontracting is not permitted except as provided in the Specifications.
2. Where subcontracting is permitted, Consultant 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. Consultant’s use of subConsultants shall in no way affect Consultant’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, Consultant shall insert appropriate provisions binding subConsultants to applicable terms and conditions of the Contract.

- Q. Recordkeeping:** Consultant 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 Consultant 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.

R. **Assignment:**

1. Consultant 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.
2. 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 Consultant and to any person or corporation to which the Contract has been assigned, transferred, conveyed, sublet or otherwise disposed of.

S. **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.

T. **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.

U. **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. Consultant 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.

W. **Entire Agreement:**

1. 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.
2. 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.

X. **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. Consultant shall include its organization's affirmative action policy

and agree that all presentations and materials will be free from racial, religious or sexual bias.

Y. **M/WBE and SDVOB:** FIT encourages Minority and Women Business Enterprise (M/WBE) participation in this project by Consultants, sub-Consultants and suppliers, and all bidders are expected to cooperate with that commitment. Also, bidders are encouraged to use Service-Disabled Veteran-Owned Businesses (SDVOB). A directory of New York State Certified Minority and Women's Business Enterprise is available from: Empire State Development Corporation, Minority and Women's Business Development Division at <http://www.esd.ny.gov/mwbe.html> to assist potential bidders in locating sources of M/WBE sub-Consultants and reaching these goals. SDVOBs can be readily identified on the directory of New York State certified businesses at <https://online.ogs.ny.gov/SDVOB/search>.

Z. **Data Security for Student Records:**

1. **Protection of Confidential Data:** Consultant 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 Consultant, if any.
3. **Acknowledgment of Access to CDI:** Consultant acknowledges that the Contract allows the Consultant access to CDI.
4. **Prohibition on Unauthorized Use or Disclosure of CDI:** Consultant agrees to hold CDI in strict confidence. Consultant 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. Consultant 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, Consultant shall return all CDI to the College, or if return is not feasible, destroy any and all CDI. If the Consultant destroys the information, the Consultant 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 Consultant has materially breached any of its obligations under this Contract, the College, in its sole discretion, shall have the right to require the Consultant 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 Consultant 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 Consultant improperly disclosed personally identifiable information obtained from the College's education records, the College may not allow the Consultant access to education records for at least five years.
7. **Maintenance of the Security of Electronic Information:** Consultant 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 subConsultants used by Consultant.

8. **Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information:** Consultant 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. Consultant'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 Consultant has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Consultant has taken or shall take to prevent future similar unauthorized use or disclosure. Consultant shall provide such other information, including a written report, as reasonably requested by the College.
9. **Indemnity:** Consultant 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 Consultant's failure to meet any of its obligations under this Contract.

To Be Signed Only Upon Award of Contract

RFP # C1401

Title: On-Call Architectural And
Related Services

Contract Signature Page

In witness whereof, the Fashion Institute of Technology and Consultant have executed this Contract:

The amount of this Contract is, as per attached rates _____

_____ Dollars (\$ _____)

FOR CONSULTANT:

Signature

Company Name

Print Name and Title

Acknowledgement of Person Executing Contract

State of New York)

County of _____) SS:

On this _____ day of _____, 2022,

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 &
F.I.T. Student Housing Corporation:**

Sherry Brabham, Vice President for Finance and
Administration

Date