

# REQUEST FOR PROPOSAL (RFP)

RFP# 17-029

## NEW YORK STATE EDUCATION DEPARTMENT

### **Title: Technical Assistance Center for the Universal Service Discount (E-Rate) Program**

The New York State Education Department (NYSED) Office of Educational Design and Technology (ED&T) within the P-12 Program Area is seeking proposals for the provision of technical assistance and planning services related to the implementation of the Universal Service Discount (E-Rate) Program for schools and libraries in New York State. NYSED encourages entities experienced in consulting for educational institutions on the utilization of E-Rate funding to respond to this Request for Proposals.

The New York State Education Department is part of the University of the State of New York (USNY), one of the most complete, interconnected systems of educational services in the United States. The mission of NYSED is to raise the knowledge, skill, and opportunity of all the people in New York. The vision is to provide leadership for a system that yields the best educated people in the world. The Educational Design and Technology unit of NYSED helps guide the effective integration of technology to transform learning environments statewide. It harnesses information, communication, and professional networks to support innovations that maximize school and learner success.

### **Program Needs Statement**

Digital learning technologies and the importance of the Internet in connecting students, teachers, and consumers to jobs, life-long learning, and information have created the demand for increasing bandwidth in schools and libraries. Mandated by Congress in 1996 and implemented by the Federal Communications Commission in 1997, the Schools and Libraries program, also known as the E-rate program, makes telecommunications and information services more affordable for schools and libraries in America. The E-rate provides discounted telecommunications, Internet access, and internal connections to eligible schools and libraries, funded by the Universal Service Fund (USF). Comprehensive changes were made to the E-rate program beginning in Funding Year 2015. Navigating through the process for any applicant is very complex and strenuous, and requires a high level of expertise in knowledge of the E-rate program. Revised rules and regulations require all applicants now to submit information online, and these changes and any additional changes the FCC decides on in the future will affect New York districts, schools, libraries, and other E-rate eligible consortia. Many schools and libraries don't have the resources they need to research the ever-changing E-rate eligibility rules or develop and maintain processes to ensure compliance with E-rate program requirements.

### **Program Goals**

NYSED's goal with this RFP is to attract and retain expert consultancy services to ensure that school districts, libraries, and all eligible New York entities receive the maximum reimbursement rate and a full spectrum of support for managing the entire E-rate funding and program compliance processes. The anticipated program beneficiaries will be the students, teachers, staff, and patrons of New York

State schools and libraries and other E-rate program beneficiaries. The successful applicant will have a thorough knowledge and understanding of the E-Rate application cycle and reimbursement criteria for the contract years and will provide professional services as they relate to applying for E-Rate reimbursement with schools, districts, libraries and other New York State E-rate eligible entities. The vendor will provide their professional knowledge and experience as it pertains to technology, education and E-rate guidelines.

Subcontracting will be limited to thirty percent (30%) of the total contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. Bidders are required to comply with NYSED's Minority and Women-Owned Business Enterprises (M/WBE) participation goals for this RFP through one of three methods. Compliance methods are discussed in detail in the Minority/Women-Owned Business Enterprise (M/WBE) Participation Goals section below.

NYSED will award one contract pursuant to this RFP. The contract resulting from this RFP will be for a five (5) year term, anticipated to begin November 1, 2017 and end October 31, 2022.

**Service Area:** New York State

**Mandatory Requirements:** Please see the Mandatory Requirements section of the RFP.

**Components contained in RFP Proposal #17-029 are as follows:**

- 1.) Description Of Services To Be Performed
- 2.) Submission
- 3.) Evaluation Criteria and Method of Award
- 4.) Assurances
- 5.) Submission Documents (separate document)

Questions regarding the request must be submitted by E-mail to [ERateTACrfp@nysed.gov](mailto:ERateTACrfp@nysed.gov) no later than the close of business on April 4, 2017. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted to [NYSED's Competitive Procurement Contracts webpage](#) no later than April 13, 2017.

**Designated Contacts for this RFP**

**Program Matters**

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**Fiscal Matters**

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**M/WBE Matters**

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The following documents must be submitted in separately sealed envelopes, as detailed in the Submission section of the RFP, and be received at NYSED no later than **April 28, 2017 at 3:00pm**.

1. Submission Documents labeled **Submission Documents - RFP #17-029 Do Not Open**
2. Technical Proposal labeled **Technical Proposal - RFP #17-029 Do Not Open**
3. Cost Proposal labeled **Cost Proposal – RFP #17-029 Do Not Open**
4. M/WBE Documents labeled **M/WBE Documents—RFP #17-029 Do Not Open**
5. CD-ROM containing the technical, cost, submission and M/WBE proposals submitted using Microsoft Word. Place in a separate envelope labeled **CD-ROM-RFP#17-029 Do Not Open**.

The mailing address for all the above documentation is:

NYS Education Department  
Bureau of Fiscal Management  
Attn: Nell Brady, RFP# 17-029  
Contract Administration Unit  
89 Washington Avenue, Room 501W EB  
Albany, NY 12234

**(Facsimile copies of the proposals are NOT acceptable)**

## 1.) **Description of Services to be Performed**

### **Work Statement and Specifications**

This section of the bid package details the services and products to be acquired. Please note that the contract process also includes general New York State administrative terms and conditions, as well as terms and conditions required by New York State law. These terms and conditions address issues related to both the submission of bids and any subsequent contract; they are included separately in this bid package for your information. Please review all terms and conditions.

### **MANDATORY REQUIREMENTS**

The eligible bidder must submit with their proposal the Technical Assistance Center (TAC) Certification Form (found in the Submission Documents attached separately).

### **Minority and Women-Owned Business Enterprise (M/WBE) Participation Goals Pursuant to Article 15-A of the New York State Executive Law**

For purposes of this procurement, NYS Education Department hereby establishes an overall goal of 30% of the total contract amount for M/WBE participation, 17% for Minority-Owned Business Enterprises (“MBE”) participation and 13% for Women-Owned Business Enterprises (“WBE”) participation based on the current availability of qualified MBEs and WBEs. All bidders must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. Minority and Women-Owned Business Enterprise (M/WBE) participation includes any and all services, materials or supplies purchased from New York State certified minority and women-owned firms. Utilization of certified Minority and Women-Owned firms will be applied toward the goals. Bidders can achieve compliance with NYSED’s Minority and Women-Owned Business Enterprise goals as described below.

#### **ACHIEVE FULL COMPLIANCE WITH PARTICIPATION GOALS (PREFERRED)**

Bidders should submit subcontracting/supplier forms that meet or exceed NYSED’s participation goals for this procurement. All subcontracting/supplier forms must be submitted with the bid proposal. In addition, bidders must complete and submit M/WBE 100: Utilization Plan, M/WBE 102: Notice of Intent to Participate and EEO 100: Staffing Plan. Instructions and copies of these forms are located in the Submission Documents. All firms utilized must be certified with the NYS Division of Minority and Women Business Development before beginning any work on this contract. For additional information and a listing of currently certified M/WBEs, see the [NYS Directory of Certified Minority and Women-Owned Business Enterprises](#).

The contact person on M/WBE matters is available throughout the application and procurement process to assist bidders in meeting the M/WBE goals. NYSED reserves the right to approve the addition or deletion of subcontractors or suppliers to enable bidders to comply with the M/WBE goals, provided such addition or deletion does not impact the technical proposal and/or increase the total cost of the bid proposal.

#### **DOCUMENTATION OF GOOD FAITH EFFORTS**

Bidders must undertake a good faith effort to solicit NYS Certified M/WBE firms as subcontractors and/or suppliers in fulfillment of this procurement. Means of solicitation may include but are not

limited to: advertisements in minority centered publications; solicitation of vendors found in the [NYS Directory of Certified Minority and Women-Owned Business Enterprises](#); and the solicitation of minority and women-oriented trade and labor organizations. Bidders will be required to certify and attest to their good faith efforts by completing NYSED's Certification of Good Faith Efforts (Form M/WBE 105). See the M/WBE Submission Documents for detailed examples of and required forms to document good faith efforts.

NYSED reserves the right to reject any bid for failure to document "good faith efforts" to comply with the stated M/WBE goals.

IN THE EVENT BIDDERS CANNOT COMPLY WITH NYSED DESIGNATED PARTICIPATION GOALS, SAID BIDDERS MUST DOCUMENT THEIR "GOOD FAITH EFFORTS" TO COMPLY AND SUBMIT ONE OF THE FOLLOWING REQUESTS:

**REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS**

In order to request a partial waiver of the participation goals for this procurement, Bidders must provide documentation of their good faith efforts to obtain the use of certified M/WBE enterprises along with their bid proposal forms. The subcontracting forms must include the participation percentage(s) for which they seek approval. Bidders will be required to certify and attest to their good faith efforts. Bidders should submit a request for a partial waiver (Form M/WBE 101) and document their Good Faith Efforts (Form M/WBE 105) at the same time as the bid is submitted. Bidders must also complete and submit M/WBE 100: Utilization Plan, M/WBE 102: Notice of Intent to Participate and EEO 100: Staffing Plan. The M/WBE Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

**REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS**

In order to request a complete waiver of the participation goals for this procurement, Bidders must provide documentation of their Good Faith Efforts to obtain the use of certified M/WBE enterprises along with their bid proposal forms. Bidders will be required to certify and attest to their good faith efforts. Bidders should submit a request for a complete waiver on Form M/WBE 101 and document their Good Faith Efforts (Form M/WBE 105) at the same time as they submit their bid. The M/WBE Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

All payments to Minority and Women-Owned Business Enterprise subcontractor(s) must be reported to NYSED M/WBE Program Unit using M/WBE 103 Quarterly M/WBE Compliance Report. This report must be submitted on a quarterly basis and can be found at NYSED's [M/WBE Forms and Compliance Forms webpage](#).

**Service-Disabled Veteran-Owned Business (SDVOB) Participation Goals Pursuant to Article 17-B of New York State Executive Law**

Article 17-B of Executive Law was enacted to ensure that certified SDVOBs are provided opportunities for meaningful participation in the performance of state contracts. To this end, NYSED strongly encourages bidders to make maximum possible use of SDVOBs as subcontractors and/or suppliers under this contract, consistent with the requirements of State Finance Law and State procurement guidelines, as well as NYSED policies and procedures. Bidders should consider fulfilling the requirements of this contract through the participation of SDVOBs at a rate of 6%. For additional information about this program, including a list of SDVOBs, please visit the [Office of General Services, Division of Service-Disabled Veterans' Business Development website](#).

## Background

The purpose of this RFP is to retain a contractor (the “Contractor”) to administer the E-rate program for a five year period in New York State on behalf of NYSED. This applies to the E-rate programs of approximately 695 school districts, 280 charter schools, and 2,000 non-public school buildings, over 200 Head Start programs, pre-kindergarten, adult education, and juvenile justice programs, the 32 library systems in New York State, 756 public and association libraries, and approximately 300 special research libraries.

The Telecommunications Act of 1996 created a program for providing discounts on telecommunication services (e.g. high speed internet, voice services) to schools and libraries as a component of the universal service provisions of the Act. More information about the program can be found at [http://www.fcc.gov/wcb/tapd/universal\\_service/schoolsandlibs.html](http://www.fcc.gov/wcb/tapd/universal_service/schoolsandlibs.html). This program is known as the E-rate program. In July and December, 2014, the FCC took steps to modernize the E-rate program, by adopting the [First and Second E-rate Modernization Orders](#) implementing a fundamental reset of E-rate, the first such effort since the program’s inception in 1996.

In accordance with the Modernization Orders, E-rate program funds are divided into two funding categories: Category One Services (Recurring Telecommunication Services) Telecommunication and Internet Access, and due to the recent E-Rate Modernization Order, Category Two Services - connectivity to devices within buildings, and broadband distribution services and equipment. The successful applicant will be knowledgeable of, and demonstrate expertise with, both E-Rate funding categories.

The Universal Service Administrative Company (USAC), a non-profit organization ([www.usac.org](http://www.usac.org)), has been appointed by the FCC as the overall administrator of Universal Service Fund collection and distribution. The Schools and Libraries Division (SLD) of USAC is responsible for administering the E-rate program for libraries and schools nationwide. This program provides the opportunity for substantially reducing the cost of telecommunications and internet connection services to educational entities including public schools, public and private libraries, Adult Education programs, juvenile justice systems, charter schools, non-public schools, and Headstart programs. E-rate discounts have returned over \$100 million dollars on average each of the past four years to New York’s schools and libraries.

## Program Deliverables

E-rate program rules are complex and nuanced. The recent adoption of the two [E-Rate Modernization Orders](#) by the Federal Communications Commission (FCC) substantially changed E-Rate funding priorities to include a primary focus on improving internet connectivity and download speeds to support an increasingly rich and sophisticated classroom technology environment. As a result of this change, coupled with the New York State Board of Regents emphasis on moving toward computer based assessments and the New York State Legislatures’ interest in expanded blended learning opportunities, NYSED anticipates that New York’s universal service programs will undergo frequent and substantial revisions that will require even more comprehensive State efforts to inform and guide schools and libraries through the intense preparation required to complete effective and successful applications.

The summaries of services set forth below are required to be performed by the Contractor. In each area, the Contractor will work collaboratively with New York State agencies, Federal agencies and their designees:

**I. Provide technical assistance and training to schools, Regional Information Centers, Adult Education programs and libraries.**

The contractor will provide technical assistance and training to schools including school districts and regional service agencies (such as BOCES and the RICs, Regional Adult Education Networks etc.) as well as non-public schools, charter schools and non-public school consortium organizations. Individual libraries will receive some assistance from library systems offices, but library system staff and the state library E-rate coordinator will make use of the Contractor's technical assistance. The E-rate program is, by its nature, highly technical, and applicants benefit from deeper expert advice. In addition, the applications have many legal certifications and assurances that may be challenged by USAC's Program Integrity Assurance (PIA) reviewers or auditors. The Contractor will provide technical assistance in creating a complete and satisfactory response.

The Contractor will conduct ten (10) training sessions each year of the contract throughout New York State to provide schools, libraries and other program beneficiaries with an understanding of E-rate and the processes for obtaining these funds. Historically, BOCES or RICs have provided the space at no charge for the sessions. The contractor is responsible for organizing and conducting the sessions.

Five of the sessions will be conducted regionally and in-person; by 'regional', NYSED refers to the Western, Central, Eastern/Capital, New York City, and Long Island Regions, or similar geographical breakdown of New York State. Contractor will commit to a minimum of one day per Region; "splitting" a day between NYC and Long Island, for instance, will not be allowed. Five of the sessions will be delivered via web-based technology and will be open to the entire state. One webinar should be recorded and posted on Contractor's website. At least 2 sessions of the 10 will be held specifically for library applicants, either in-person at a library or library system or via webinar.

The sessions will provide technical assistance on how to effectively participate in the program and leverage the E-Rate funding, including providing basic information for new applicants and updates on changes to existing grantees. Contractor will also help provide initial program eligibility determinations for potential applicants including, but not limited to, the newly-E-rate eligible Adult Education programs statewide and assisting in their efforts to become program eligible, disseminating timely and accurate information on program guidelines, requirements, and policy updates/changes. In at least three of the regional in-person training workshops, Contractor will provide a partial focus on this aspect of the program, customized to meet any unique needs associated with this provider group; one of the ten sessions must be hosted jointly and/or scheduled jointly with the RAEN Network contact(s). Contractor will provide a recorded webinar of an Adult Education program training session for applicants unable to attend the regional meetings, to be posted on contractor's website. In developing the workshops, Contractor will annually solicit input from NYSED, key stakeholders and prior year participants in developing a new or updated training curriculum, which will then be submitted to NYSED for review and must be approved by NYSED at least two weeks in advance of the start date of the published schedule. Contractor should plan to hold training sessions in the late fall/early winter of every year. Depending on the nature and the extent of recent program policy changes that must be incorporated in annual E-Rate applications submitted by applicants and the anticipated number of new or renewal applicants from a given region, the Contractor will schedule two versions of sessions in the same day or two-day period to provide basic information (incorporating any new program changes) in a longer session for new applicants and a separate shorter session

with only updates on changes for existing grantees. In this case, the two versions would count as one in-person session.

The following is a list of seminar sessions conducted in a previous year, for sample purposes only. It can be anticipated (but not guaranteed) that attendance would be similar for future sessions:

**Seminar Sessions conducted in 2016:**

<u>Dated</u>	<u>Audience</u>	<u>Locale</u>	<u>Attendance</u>
Nov. 2	Long Island	Oakdale	~ 40
Nov. 9	Western NYS	West Seneca	~ 15
Nov. 10	Central NYS	Oneida	~ 30
Nov. 17	Lower Hudson	Rockland	~ 30
Nov. 20	Northeastern NYS	Albany	~ 60
Nov. 20	Mid-York Libraries	Utica	~ 20
Nov. 23	New York City	Manhattan	~ 15
Dec. 7	Long Island	Garden City	~ 50
Dec. 15	Public Libraries	Rotate yearly	~ 20
Dec. 16	New York City	Brooklyn	~ 45

The Contractor will provide technical assistance to public library systems, reference and research library resources councils, individual libraries, and for consortial library applications. Telephone conference calls with the 32 library system staff with E-rate responsibilities will be held as needed before critical E-rate program due dates, not to exceed three a year. The 32 library systems in New York State provide the first line of assistance for any of the approximately 1400 library outlets applying for E-rate. These conference calls can serve to highlight the major application process errors resulting in denial of funds to NYS applicants.

The Contractor will also be available to participate in at least two New York State school or library conferences to provide E-rate assistance. For example, in 2014 the previous contractor participated in two ACCES Adult Education conferences – one sponsored by the Regional Adult Education Network (RAEN) and the other to the Big 5 School Districts Adult Education Program leadership in Albany, NY.

In addition, the contractor shall be available by telephone, e-mail and/or other such electronic media to assist individual applicants with questions concerning all aspects of E-Rate. This service is to be available Monday through Friday from 9:00AM - 5:00PM Eastern Time, excluding State holidays, with an expectation that calls or e-mail requests will generally receive a response within 48 business-day hours.

**II. Monitor the State E-Rate Coordinator EPC environment/Assist Troubleshooting Applications**

The contractor will assist NYS agencies with use of the E-rate Productivity Center (EPC) account and application management portal used by E-rate applicants, consultants, and service providers to manage program processes (such as submitting forms). The contractor will assist LEAs/consortia with completing all E-rate application forms, filings and required correspondence. The contractor will

serve as the NYS State-wide point of contact for all E-rate reviews, audits and appeals, answer all Program Integrity Assurance (PIA) questions, prepare and respond to Selective Review Audits, and prepare and file SLD and FCC Appeals. The contractor will answer compliance questions and eligibility issues, answer questions concerning E-Rate policies, and review applications.

The contractor will assist districts, libraries, and eligible consortia and agencies with E-rate form submission and Discount Rate Optimization. The contractor will monitor the State E-Rate Coordinator EPC environment to flag applicants in need of additional assistance. The contractor will provide advance notification of significant funding and FCC appeal decisions to New York applicants through the various communication channels provided for in the contract, such as a regular newsletter, posting to the Website, and inclusion on seminar and conference call agendas as identified in this RFP.

The contractor will alert individual applicants – including schools, Adult Education providers and library applicants - in danger of missing E-rate form submission deadlines, as needed.

The contractor will assist eligible applicants with Request for Proposal Review (RFP) and Implementation. The contractor will provide and disseminate sample E-rate compliant pre-bidding process and contract compliance protocols and assist individual applicants as requested.

### **III. Create and maintain a website to communicate regularly with the E-Rate Community**

In addition to conducting the training and informational sessions described above, the contractor will create and maintain a web site dedicated to the E-rate program in New York State. This includes timely updates of the site with information regarding E-Rate and periodic enhancements to the site architecture to improve end user access and navigation. Upon awarding of the new contract, all information on [the current website](#) will be provided by the previous vendor for use under the new contract holder's web domain. Contractor will not have access to NYSED web domain(s). NYSED will annually review the site and will provide requests for changes and/or enhancements; changes and/or enhancements must be made within 30 days of receipt of request. The site must be made available to the public no later than two weeks after contract execution.

The website will also serve the function of providing regular comprehensive communication with all stakeholders providing content of interest to New York State program participants, including, for example, periodic stories profiling E-rate programs that successfully utilize program reimbursements to improve digital learning in schools and libraries.

Under the direction of NYSED, contractor will develop and maintain on the website easy-to-use tools to organize and analyze information pertaining to each specific E-rate program entity from our 4,500+ schools, 695 school districts, 37 BOCES, 150+ Adult Education providers and 1400 library outlets applying for E-rate. In addition, the contractor will provide historical funding analyses for all funding years from the inception of the program to present day. NYSED will support this process and provide all accessible data and resources for this process. The contractor, through the website, will provide and analyze data on libraries and schools in New York State applying for e-rate. Data will include funding received and type of funding requested for both libraries and schools. Web pages will provide visual presentation of data on maps and/or graphs. Consultant will assist SED in targeting areas of the state that need more outreach and education about the benefits of the E-rate program.

The website will support an Online Document Repository of pertinent documents for NYS E-rate programs.

The website will provide a Children's Internet Protection Act (CIPA) compliance checklist, to ensure all CIPA requirements have been met, including document review, tracking, and retention. The website will provide sample Internet Safety and Acceptable Use policies that can be modified to fit LEA/consortia needs.

In addition, the contractor will distribute a weekly E-rate program newsletter with updates on funding status, progress, and program changes of interest to New York State subscribers via e-mail.

#### **IV. Collaborate with NYSED to assure that the E-Rate program policies are fair and equitable and meet the needs of New York State.**

The Contractor will provide expert analyses of NYS E-rate applications in order to ensure compliance with the requirements and identify goals that constitute E-rate eligible goods and services. The Contractor will assist eligible NYS agencies with E-rate appeals and audit support as needed.

The Contractor will provide NYSED with weekly updates of E-rate program activities (including status of E-Rate applications, issues associated with E-rate program auditing and specific changes and clarifications on the rules and guidelines of the program implementation) and will have meetings to discuss problems and plans twice per calendar month. These bi-monthly meetings may be by telephone or video conference, but two meetings per year will be held at NYSED offices in Albany. The contractor may be called upon to represent NYSED at specified meetings (on the nature, scope and impact of the E-rate program for schools and libraries). Such representation shall be at the discretion of NYSED and occur only upon written instructions from NYSED. These meetings will occur no more than three (3) times annually, and may require travel to Washington, D.C. Prior to each bi-monthly meeting with NYSED, the Contractor will submit a program update report on activities conducted during the previous two-month period. These updates will be incorporated in quarterly invoices and will be provided on the prescribed NYSED forms.

The contractor will assist NYSED in conducting an annual program evaluation effort to solicit input from key stakeholders to generate recommendations to improve NYSED's E-rate program. In the fourth quarter of each contract year the contractor will survey New York State agencies, BOCES or other E-rate eligible agencies with a self-evaluation survey instrument developed in consultation with NYSED and updated annually by the contractor, to maximize statewide capacity to leverage E-Rate and other related state or federal program funding or purchasing power available to advance the ability of Local Education Agencies or libraries to enhance their ability to provide additional opportunities for digital learning. The survey instrument will allow NYS E-rate stakeholders to help evaluate the methodology and approach the contractor is taking to assist New York State E-rate eligible entities to develop E-Rate Program improvements successfully. The Contractor will compile and summarize the survey results, and review them with NYSED prior to the end of each contract year. The Contractor will prepare a report describing findings and providing recommendations and an action plan to be put in place the following contract year.

#### **IV. Representing NYSED as a formal liaison with USAC as required**

The Contractor will assist NYSED or other state or federal agencies as assigned with ensuring New York applicants and recipients are complying with applicable state and federal program requirements.

The Contractor will provide CIPA compliance services to LEAs and/or consortia. Compliance reporting support will be provided upon request by the Contractor to USAC on behalf of schools or libraries taking steps to become compliant with the CIPA requirements. The Contractor will provide guidance on the creation and modification of CIPA-relevant documents, and answer questions about CIPA language and requirements.

The Contractor will keep NY local E-rate coordinators up to date on all program changes, such as the 2015 Modernization Order, and help LEAs/consortia identify opportunities where money can be saved on telecommunication and Internet service, and assist LEAs/consortia in identifying all E-Rate funding possibilities.

#### **V. Provide assistance to USAC's PIA reviewers for resolving issues involving New York applicants.**

The contractor will review, and respond as required, to all copies of warning notices sent by USAC reviewers to ED&T advising them of applicants in danger of missing deadlines for submission of additional application review documentation. The contractor will respond to every direct request by USAC PIA reviewers for entity validation and other assistance requested with New York applicants (eligibility of applicant, calculation of discount rate based on its Free and Reduced Lunch Enrollment rate or Community Eligibility, a proper process of bidding for contracted services and products, appropriate cost allocation of requested services). Entity validation is required mostly for non-public schools due to the frequency of their closing. However, in the event that a public school (instructional facility) must be validated by USAC PIA, Contractor will work with ED&T and other NYSED offices to ensure that entity validation is confirmed.

Contractor will proactively intervene and provide assistance to USAC's Program Integrity Assurance (PIA) reviewers to successfully resolve issues involving New York applicants. Contractor will support NYSED entities that may wish to file an appeal of a USAC decision, and represent NYSED by participating in state education agencies coordination meetings at the national level regarding E-rate program policy and procedure improvements. Travel is historically not required for PIA and appeals. The contractor may expect to attend USAC training twice a year and one SECA meeting, with SECA meeting often in tandem with the USAC training, for 3-4 days, twice a year.

#### **VI. Participate in the State E-Rate Coordinators' Alliance ("SECA").**

Under the New York State E-Rate Coordinator's direction (ED&T), the contractor will serve as New York's representative to the State E-Rate Coordinators' Alliance ("SECA"). SECA participation includes being on the active listserv to share E-rate problems and solutions, attending any SECA teleconferences up to one 1-hour call per week, (including up to one monthly call with the SLD and FCC), and up to one annual meeting in Washington D.C, per contract year. Bidders should budget for membership fees and travel costs.

#### **VII. Monitor FCC rulings and prepare and submit FCC/USAC filings on E-rate issues.**

The contractor will monitor FCC orders, requests for comments, and appeal decisions and assist NYSED in reviewing, interpreting and summarizing FCC or USAC-initiated program policy or procedural changes and drafting potential NYSED replies or interrogatories. The contractor will provide draft comments as requested and assist NYSED in preparing or file on behalf of NYSED comments on FCC proceedings, modernization orders, etc., affecting New York State applicants. In 2014, this consisted of approximately 4 total 1 hour conference calls, with NYSED resulting in at least one filing supporting aspects of the FCC's two Modernization Orders.

## **IX. Coordinate state master contracts with NYS OGS.**

Many of the State's telecommunications and IT equipment contracts can be used by NY E-rate applicants. As NYSED's E-rate coordinator, the Contractor will work with the NYS Office of General Services (OGS) to make sure that OGS contracts are considered eligible and that NY applicants know how to use those contracts for E-rate purposes.

A special portion of the OGS Web site has been set up to list potentially E-rate eligible contracted services and equipment. See: [OGS Contracts Available For E-Rate Discount](#). Since the contract expiration dates of these contracts do not generally coincide with the E-rate funding year, the Contractor may have to work with OGS to negotiate limited extensions for E-rate applicants.

## **Contractor Responsibilities**

- A. The contractor must designate a Program Director who will:
1. Maintain work schedules and assignments of staff. It is suggested that the work contemplated by this RFP can be achieved by 1FTE.
  2. Submit required reports to NYSED, including:
    - a. Weekly updates of E-rate program activities (including status of E-Rate applications, issues associated with E-rate program auditing and specific changes and clarifications on the rules and guidelines of the program implementation).
    - b. Bi-monthly status reports, with summaries of program expenditures, which will be incorporated in quarterly invoices.
    - c. Documentation of all interactions with NYSED program management staff (ED&T), related advisory committee members, State agencies, BOCES, RICs and Adult Education providers and other principal organizations e.g., Federal Communications Commission, U.S. Department of Education associated with program activities.
    - d. Meeting summaries.
  3. Participate in bi-monthly status meetings with NYSED. These meetings may be by telephone or video conference.
  4. Assume overall responsibility for successful and timely completion of all project deliverables.
    - a. The Contractor will provide a Yearly Work Plan that will define tasks and responsibilities. The Work Plan will provide detailed projections of start and end dates and will be revised, as needed, as part of the bi-monthly status meeting with NYSED.
    - b. The Contractor will assume, and not transfer, fiduciary responsibility for all funds awarded pursuant to this program. All program funds must be accounted for using

straightforward, clearly delineated procedures for documenting all program expenditures.

- c. Reports and other outputs as specified in the program deliverables will be submitted to NYSED in electronic form in formats prescribed by NYSED (e.g. Word, Access, Excel).

## **NYSED Responsibilities**

NYSED will assign a staff person as the primary contact for this contract. That individual will be responsible for oversight and management of all components of the program, including the work of the Contractor.

- A. NYSED will provide to the contractor, as necessary, documentation needed to proceed with all aspects of program work. Access to NYSED staff and other organizations will be facilitated by NYSED to ensure adequate engagement of individuals and organizations necessary to successfully complete all program tasks.
- B. The contractor will submit a detailed annual work plan prior to the start of each subsequent calendar year of the contract. NYSED will review plans for program deliverables as specified in the Program Deliverables section and provide written sign-offs (either acceptance or rejections) to the contractor within 45 days of receipt by NYSED.
- C. NYSED will review all reports and other required documentation and provide written sign-offs (either acceptance or rejections) to the contractor within 45 days of receipt by NYSED.

## **Payments**

NYSED will reimburse the Contractor on a quarterly basis for the services provided under this RFP, as approved in the contract work plan and budget.

The Contractor will submit an invoice on a quarterly basis. Payment to the vendor will be made once the invoices are reviewed and project initiatives and outcomes are determined by NYSED to be acceptable. Payments will be made for only those services that have actually been provided and approved by NYSED.

## **Contract Period**

NYSED will award one (1) contract with a term of five (5) years. The contract is anticipated to run from November 1, 2017 – October 31, 2022.

## **Subcontracting Limit**

Subcontracting will be limited to thirty percent (30%) of the total contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. For vendors using subcontractors, a Vendor Responsibility Questionnaire and a NYSED vendor responsibility review are required for a subcontractor where:

- the subcontractor is known at the time of the contract award;
- the subcontractor is not an entity that is exempt from reporting by OSC; and
- the subcontract will equal or exceed \$100,000 over the life of the contract;

For additional information about Vendor Responsibility, see the **Vendor Responsibility** section contained in **3.) Evaluation Criteria and Method of Award** of this RFP.

If the vendor proposes to change subcontractors during the contract period, NYSED must be notified prior to the change. NYSED reserves the right to reject any replacement subcontractors proposed by the vendor and reserves the right to approve all changes in subcontractors. The Subcontracting Form located in the Submission Documents must be updated annually and submitted to NYSED. Using this form, the vendor must also report to NYSED, on an annual basis, actual expenditures incurred for all subcontractors and indicate which subcontracting costs are associated with M/WBE.

### **Consultant Staff Changes**

The Contractor will maintain continuity of the Consultant Team staff throughout the course of the contract. All changes in staff will be subject to NYSED approval. The replacement Consultant(s) with comparable skills will be provided at the same or lower hourly rate.

### **Electronic Processing of Payments**

In accordance with a directive dated January 22, 2010 by the Director of State Operations - Office of Taxpayer Accountability, all state agency contracts, grants, and purchase orders executed after February 28, 2010 shall contain a provision requiring that contractors and grantees accept electronic payments. Additional information and authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm).

### **Accessibility of Web-Based Information and Applications**

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

### **M/WBE AND EQUAL EMPLOYMENT OPPORTUNITIES REQUIREMENTS CONTRACTOR REQUIREMENT AND OBLIGATION UNDER NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS)**

In an effort to eradicate barriers that have historically impeded access by minority group members and women in State contracting activities, Article 15-A, of the New York State Executive Law §310-318, (Participation By Minority Group Members and Women With Respect To State Contracts) was enacted to promote equality of economic opportunities for minority group members and women.

The New York State Education Department ("NYSED") has enacted its policies Equal Opportunity, Non-Discrimination and Affirmative Action and on Minority and Women-Owned Business Enterprise Procurements, consistent with the requirements as set forth under the provisions of Article

15-A (the "Article") incorporated by reference, requiring Contracting Agencies to implement procedures to ensure that the "Contractor" (as defined under Article 15-A, §310.3 shall mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a state contract, or a bidder in conjunction with the award of a state contract or a proposed party to a state contract, complies with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, in addition to providing Opportunities for Minority and Women-Owned Business Enterprises on all covered state contracts.

In keeping with the intent of the Law, it is the expectation of the Commissioner and the responsibility of all contractors participating in and/or selected for procurement opportunities with NYSED, to fulfill their obligations to comply with the requirements of the Article and its implementing regulations.

In accordance with these requirements, the contractor hereby agrees to make every good faith effort to promote and assist the participation of certified Minority and Women-Owned Business Enterprises ("M/WBE") as subcontractors and suppliers on this program for the provision of services and materials in an amount at least equal to the M/WBE goal (Included in the procurement document) as a percentage of the total dollar value of this program. In addition, the contractor shall ensure the following:

1. All state contracts and all documents soliciting bids or proposals for state contracts contain or make reference to the following provisions:

a. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

For purposes of the Article, affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination and rate of pay or other forms of compensation.

b. The contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligation herein.

c. The contractor shall state in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status.

2. The contractor will include the provisions of subdivision one of this section in every subcontract as defined under §310.14, except as provided under §312.6 of the Article, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the State contract.

3. Contractors or subcontractors shall comply with the requirements of any federal law concerning equal employment opportunity, which effectuates the purpose of this section.

4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section<sup>1</sup>. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).
5. Certified businesses (as defined under Article 15-A, §310.1 means a business verified as a minority or women-owned business enterprise pursuant to §314 of the Article) shall be given the opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share of this contract to such businesses<sup>2</sup>.
6. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the [Empire State Development \(“ESD”\) directory of certified businesses](#). The contractor must document its good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.
7. Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.
8. Contractor shall include the provisions set forth in paragraphs (6) and (7) above, in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with this contract.
9. Contractor shall comply with the requirements of any federal law concerning opportunities for M/WBEs which effectuates the purpose of this section.

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<sup>1</sup> Notice – Contractors are provided with notice herein, NYSED may require a contractor to submit proof of an equal opportunity program after the proposal opening and prior to the award of any contract. In accordance with regulations set forth under Article 15-A §312.5, contractors and/or subcontractors will be required to submit compliance reports relating to the contractor’s and/or subcontractor’s program in effect as of the date the contract is executed.

<sup>2</sup> Should the contractor identify a firm that is not currently certified as an M/WBE, it should request that the firm submit a certification application [Empire State Development](#) by the deadline for submission of proposals for eligibility determination. NYSED will work with ESD to expedite the application, however, it is the responsibility of the contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

## 2.) Submission

### Documents to be submitted with this proposal

This section details the submission document or documents that are expected to be transmitted by the respondent to the State Education Department in response to this RFP. New York State Education Department shall own all materials, processes, and products (software, code, documentation and other written materials) developed under this contract. Materials prepared under this contract shall be in a form that will be ready for copyright in the name of the New York State Education Department. Any sub-contractor is also bound by these terms. The submission will become the basis on which NYSED will judge the respondent's ability to perform the required services as laid out in the RFP. This will be followed by various terms and conditions that reflect the specific needs of this program.

### Program Submission:

The proposal submitted in response to this RFP must include the following documents:

1. Submission Documents—Two (2) copies (one bearing an original signature)
2. Technical Proposal—Five (5) copies (one bearing an original signature in blue ink)
3. Cost Proposal—Three (3) copies (one bearing an original signature in blue ink)
4. Microsoft Word (CD format)—One (1) electronic version with both the technical and cost proposals.
5. M/WBE Documents—Two (2) copies (one bearing an original signature in blue ink)

The proposal must be received **April 28, 2017** by **3:00 PM** at NYSED in Albany, New York.

Proposals should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide complete presentation. If supplemental materials are a necessary part of the proposal, the bidder should reference these materials in the technical proposal, identifying the document(s) and citing the appropriate section and page(s) to be reviewed.

The proposal must communicate an understanding of the deliverables of the RFP, describe how the tasks are to be performed and identify potential problems in the conduct of the deliverables and methods to identify and solve such problems.

Bidders should specify all details and dates required to evaluate the technical proposal and should limit aspects of the program plan which are to be determined only after the award of a contract. No optional deliverables to be provided only at an additional cost should be included and will not be considered in the evaluation of the technical proposal. Contractual terms, conditions and assumptions are inappropriate for inclusion in the proposal.

Any proprietary material considered confidential by the bidder will specifically be so identified, and the basis for such confidentiality will be specifically set forth in the proposal by submitting the form "Request for Exemption from Disclosure Pursuant to the Freedom of Information Law," located in 5) Submission Documents.

### Technical Proposal

**(70 points)**

The original plus four copies of the completed Technical Proposal must be mailed in a separate envelope labeled **RFP#17-029-Technical Proposal-Do Not Open** and must include the following:

## Transmittal Instructions

After completing all the required parts of the RFP, assemble your Technical Proposal in the following order:

### 1. Technical Proposal

- Program Description including documentation of applicant's experience with the E-rate program and application process. **(40 points)**
  - Bidders should describe and document the extent of their experience in providing technical assistance in one or more aspects of the E-rate program. Evidence of at least three years of experience in providing successful technical assistance to E-Rate applicants and recipients strongly preferred, in addition to the extent of their experience with public procurements and familiarity with the products and services eligible for purchase with E-Rate funds. Resume for the Project Manager and resume for any other staff should be included. (15 points)
  - Bidders should document the extent of their experience in providing staff development and/or technical assistance to the education community including public and non-public K-12 institutions, BOCES, Adult Education providers, colleges and universities, libraries, and/or other cultural institutions. (10 points)
  - An analysis and assessment of the capacity of the applicant to establish partnerships with other organizations to ensure the efficient delivery of all services and products to RICs, library systems, Big Fives, Adult Education providers, non-public entities or consortia and SLD. (5 points)
  - A narrative description of the program's organizational structure, governance, and lines of communication, program staffing and supervision plan. Job descriptions for all staff identified in the budget should be included. (5 Points)
  - A detailed description of the program's organizational structure, in relation to the overall organization's structure and how the provision of technical assistance to New York E-Rate applicants and recipients will be completely separate from its involvement in any other E-Rate related business or services for New York E-Rate eligible entities. Organizational chart of the program and the overall bidder organization should be included. (5 Points)
- Plan of Operation for all deliverables. **(30 Points)**

The plan of operation should describe how the applicant intends to implement the tasks outlined in the Program Deliverables section including program activities, schedule of implementation, and performance indicators used to measure success. The plan must be specific enough to establish evaluation criteria and benchmarks for each activity, responsibility, or service.

### 2. Technical Assistance Center (TAC) Certification Form—Signature Required.

### 3. Request for Exemption from Disclosure Pursuant to the Freedom of Information Law, if applicable

## Cost Proposal

**(30 points)**

The original plus two (2) copies of the completed Cost Proposal must be mailed in a separate envelope labeled **RFP#17-029 -Cost Proposal-Do Not Open** and must include the following:

**Index of Documents to be completed and submitted with Cost Proposal:**

1. TAC Budget—Year One
2. Five Year Budget Summary
3. Subcontracting Form
4. M/WBE Subcontracting/Purchasing Form

**The Financial Criteria portion of the RFP will be scored based upon the grand total of the five-year budget summary.**

**M/WBE Documents**

The original plus one (1) copy of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP#17-029-M/WBE Documents-Do Not Open.**

Please return the documents listed for the compliance method bidder has achieved:

**Full Participation-No Request for Waiver**

1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan

**Signatures Required**

**Partial Participation-Partial Request for Waiver**

1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan
5. **M/WBE 101** Request for Waiver
6. **M/WBE 105** Contractor's Good Faith Efforts

**Signatures Required**

**No Participation-Request for Complete Waiver**

1. M/WBE Cover Letter
2. **M/WBE 101** Request for Waiver
3. **M/WBE 105** Contractor's Good Faith Efforts

**Signatures Required**

### 3.) Evaluation Criteria and Method of Award

This section begins with the criteria the agency will use to evaluate bids, and closes with the “method of award” or how the contractor will be selected. This will be followed by various terms and conditions that reflect the specific needs of this program as well as New York State contract guidelines and requirements.

#### Criteria for Evaluating Bids

All eligible proposals received by the deadline will be reviewed using the following criteria and ratings. Applicants must ensure that all components of this application request have been addressed, the required number of copies has been provided, all forms and assurances have been completed, and the original signatures in blue are included as required.

An evaluation committee will complete a review of all proposals submitted. The committee will review each proposal to determine compliance with the requirements described in the RFP. The committee retains the right to determine whether any deviation from the requirements of this RFP is substantial in nature and may reject in whole or in part any and all proposals, waive minor irregularities and conduct discussions with all responsible bidders.

Proposals receiving at least an average of sixty percent (60%) of the points available for the technical proposal (a total of 42 out of 70 points) will move to the next step of the process. Proposals with an average score of less than 42 points in the Technical Proposal section will be eliminated from further consideration.

<b>Technical Criteria</b>	<b>(70 Points)</b>
<b>Program Description</b>	<b>(40 Points)</b>
<b>Plan of Operation</b>	<b>(30 Points)</b>

<b>Financial Criteria</b>	<b>(30 Points)</b>
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**The Financial Criteria portion of this RFP will be scored based upon the grand total for the five-year budget summary.**

- The **financial portion** of the proposal represents thirty (30) points of the overall score and will be awarded up to thirty (30) points pursuant to a formula. This calculation will be computed by the Contract Administration Unit upon completion of the technical scoring by the technical review panel.
- The submitted budget will be awarded points pursuant to a formula which awards the highest score of 30 points to the budget that reflects the lowest overall cost. The remaining budgets will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest budget submitted. The resulting percentage is then applied to the maximum point value of 30 points.
- **NYSED reserves the right to request best and final offers. In the event NYSED exercises this right, all bidders that meet the minimum technical score will be asked to provide a best and final offer. The Contract Administration Unit will recalculate the financial score.**

## Method of Award

The aggregate score of all the criteria listed will be calculated for each proposal received.

The contract issued pursuant to this proposal will be awarded to the vendor whose aggregate technical and cost score is the highest among all the proposals rated. **If NYSED exercises the right to request best and final offers, the contract must be issued to the vendor with the highest aggregate technical and financial score that results from the best and final offer.**

In the event that more than one proposal obtains the highest aggregate score, the contract will be awarded to the vendor in that group of highest aggregate scores whose budget component reflects the lowest overall cost.

## NYSED's Reservation of Rights

NYSED reserves the right to: (1) reject any or all proposals received in response to the RFP; (2) withdraw the RFP at any time, at the agency's sole discretion; (3) make an award under the RFP in whole or in part; (4) disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP; (5) seek clarifications of proposals; (6) use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP; (7) prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available; (8) prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments; (9) change any of the scheduled dates; (10) waive any requirements that are not material; (11) negotiate with the successful bidder within the scope of the RFP in the best interests of the state; (12) conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder; (13) utilize any and all ideas submitted in the proposals received; (14) unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 90 days from the bid opening; (15) require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation; (16) to request best and final offers.

## Post Selection Procedures

Upon selection, the successful bidder will receive a proposed contract from NYSED. All terms set forth in the selected bidder's technical proposal will be final. The selected bidder may be given an opportunity to reduce its cost proposal in accordance with the agency's right to negotiate a final best price. The contents of this RFP, any subsequent correspondence during the proposal evaluation period, and such other stipulations as agreed upon may be made a part of the final contract prepared by NYSED. Successful bidders may be subject to audit and should ensure that adequate controls are in place to document the allowable activities and expenditure of State funds.

## Debriefing Procedures

In accordance with section 163 of the NY State Finance Law, NYSED, upon request, must provide a debriefing to any unsuccessful bidder regarding the reasons their proposal was not selected for an award.

1. All unsuccessful bidders may request a debriefing within fifteen (15) calendar days of receiving notice from NYSED of non-award. Bidders may request a debriefing by submitting a written request to the Fiscal Contact person at:

NYS Education Department  
Contract Administration Unit  
89 Washington Avenue  
Room 501W EB  
Albany, NY 12234

2. Upon receipt of a timely written request from the unsuccessful bidder, NYSED will schedule the debriefing to occur within a reasonable time following receipt of the request. Debriefings will be conducted in person, unless NYSED and the bidder mutually agree to utilize other means, including but not limited to telephone, video-conferencing or other types of electronic communication.
3. The debriefing will include: a) the reasons that the proposal submitted by the unsuccessful bidder was not selected for an award; b) the qualitative and quantitative analysis employed by NYSED in assessing the relative merits of the proposals; c) the application of the selection criteria to the unsuccessful bidder's proposal; and d) when the debriefing is held after the final award, the reasons for the selection of the winning proposal. The debriefing will also provide, to the greatest extent practicable, general advice and guidance to the unsuccessful bidder concerning potential ways that their future proposals could be more responsive.

## **Contract Award Protest Procedures**

Bidders who receive a notice of non-award or disqualification may protest the NYSED award decision subject to the following:

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by NYSED.
2. The protest must be filed within ten (10) business days of receipt of a debriefing or disqualification letter. The protest letter must be filed with:

NYS Education Department  
Contract Administration Unit  
89 Washington Avenue  
Room 501W EB  
Albany, NY 12234

3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, CAU, and the Program Office. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within seven (7) business days of the receipt of the protest. The original protest and

decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.

4. The NYSED Contract Administration Unit (CAU) may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

## **Vendor Responsibility**

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, NYSED must make an affirmative responsibility determination. The factors to be considered include: legal authority to do business in New York State; integrity; capacity- both organizational and financial; and previous performance. Before an award of \$100,000 or greater can be made to a covered entity, the entity will be required to complete and submit a [Vendor Responsibility Questionnaire](#). School districts, Charter Schools, BOCES, public colleges and universities, public libraries, and the Research Foundation for SUNY and CUNY are some of the exempt entities. A complete list of exempt entities can be viewed at the [Office of the State Comptroller's website](#).

NYSED recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the [VendRep System Instructions](#) or go directly to the [VendRep System on the Office of the State Comptroller's website](#).

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at [ITServiceDesk@osc.state.ny.us](mailto:ITServiceDesk@osc.state.ny.us).

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the [VendRep website](#) or may contact NYSED or the Office of the State Comptroller's Help Desk for a copy of the paper form.

### **Subcontractors:**

For vendors using subcontractors, a Vendor Responsibility Questionnaire and a NYSED vendor responsibility review are required for a subcontractor where:

- the subcontractor is known at the time of the contract award;
- the subcontractor is not an entity that is exempt from reporting by OSC; and
- the subcontract will equal or exceed \$100,000 over the life of the contract.

**Note: Bidders must acknowledge their method of filing their questionnaire by checking the appropriate box on the Response Sheet for Bids (5. Submission Documents).**

## **PROCUREMENT LOBBYING LAW**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the New York State Education Department ("NYSED") and

an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of the solicitation through final award and approval of the Procurement Contract by NYSED and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified below. NYSED employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at [NYSED's Procurement Lobbying Law Policy Guidelines](#).

Designated Contacts for NYSED  
Program Office – **John Brock**  
Contract Administration Unit – **Nell Brady**  
M/WBE – **Joan Ramsey**

## **Consultant Disclosure Legislation**

Effective June 19, 2006, new reporting requirements became effective for State contractors, as the result of an amendment to State Finance Law §§ 8 and 163. As a result of these changes in law, State contractors will be required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

Chapter 10 of the Laws of 2006 expands the definition of contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

To enable compliance with the law, State agencies must include in the Procurement Record submitted to OSC for new consultant contracts, the State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term ([Form A](#)). The completed form must include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information ***prospectively from the start date of the contract through the end of the contract term.***

Chapter 10 of the Laws of 2006 mandates that State agencies must now require State contractors to **report annually** on the employment information described above, including work performed by subcontractors. The legislation mandates that the annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to the Department of Civil Service. State Consultant Services Contractor’s Annual Employment Report ([Form B](#)) is to be used to report the information for all procurement contracts above \$15,000. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, ***Form B will be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31).***

For more information, please visit [OSC Guide to Financial Operations](#).

## **Public Officer's Law Section 73**

All bidders must comply with Public Officer's Law Section 73 (4)(a), as follows:

4. (a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(i) The term "state officer or employee" shall mean:

(i) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis;

(ii) officers and employees of statewide elected officials;

(iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and

(iv) members or directors of public authorities, other than multistate authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

Review [Public Officer's Law Section 73](#).

## **NYSED Substitute Form W-9**

Any payee/vendor/organization receiving Federal and/or State payments from NYSED must complete the NYSED Substitute Form W-9 if they are not yet registered in the Statewide Financial System centralized vendor file.

The NYS Education Department (NYSED) is using the NYSED Substitute Form W-9 to obtain certification of a vendor's Tax Identification Number in order to facilitate a vendor's registration with the SFS centralized vendor file and to ensure accuracy of information contained therein. We ask for the information on the NYSED Substitute Form W-9 to carry out the Internal Revenue laws of the United States.

## **Workers' Compensation Coverage and Debarment**

New York State Workers' Compensation Law (WCL) has specific coverage requirements for businesses contracting with New York State and additional requirements which provide for the debarment of vendors that violate certain sections of WCL. The WCL requires, and has required since introduction of the law in 1922, the heads of all municipal and State entities to ensure that businesses have appropriate workers' compensation and disability benefits insurance coverage *prior* to issuing any permits or licenses, or *prior* to entering into contracts.

Workers' compensation requirements are covered by WCL Section 57, while disability benefits are covered by WCL Section 220(8). The Workers' Compensation Benefits clause in Appendix A – STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS states that in accordance with Section 142 of the State Finance Law, a contract shall be void and of no force and effect unless the contractor provides and maintains coverage during the life of the contract for the benefit of such employees as are required to be covered by the provisions of the WCL.

Under provisions of the 2007 Workers' Compensation Reform Legislation (WCL Section 141-b), any person, or entity substantially owned by that person: subject to a final assessment of civil fines or penalties, subject to a stop-work order, or convicted of a misdemeanor for violation of Workers' Compensation laws Section 52 or 131, is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

## **PROOF OF COVERAGE REQUIREMENTS**

The Workers' Compensation Board has developed several forms to assist State contracting entities in ensuring that businesses have the appropriate workers' compensation and disability insurance coverage as required by Sections 57 and 220(8) of the WCL.

***Please note – an ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.***

### **Proof of Workers' Compensation Coverage**

To comply with coverage provisions of the WCL, the Workers' Compensation Board requires that a business seeking to enter into a State contract submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate workers' compensation insurance coverage:

- **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
- **Form SI-12**– Certificate of Workers' Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

### **Proof of Disability Benefits Coverage**

To comply with coverage provisions of the WCL regarding disability benefits, the Workers' Compensation Board requires that a business seeking to enter into a State contract must submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate disability benefits insurance coverage:

- **Form DB-120.1** - Certificate of Disability Benefits Insurance; or

- **Form DB-155-** Certificate of Disability Benefits Self-Insurance; or
- **CE-200–** Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

For additional information regarding workers’ compensation and disability benefits requirements, please refer to the [New York State Workers’ Compensation Board website](#). Alternatively, questions relating to either workers’ compensation or disability benefits coverage should be directed to the NYS Workers’ Compensation Board, Bureau of Compliance at (518) 486-6307.

**Please note that although these forms are not required as part of the bid submissions, NYSED encourages bidders to include them in their bid submission to expedite contract execution if the bidder is awarded the contract. Note also that only the forms listed above are acceptable.**

**Sales and Compensating Use Tax Certification (Tax Law, § 5-a)**

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance (“DTF”) that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring State entity that they filed the certification with the DTF and that it is correct and complete.

The selected bidder must file a properly completed Form ST-220-CA (with OSC as the Contracting Agency within 48 hours of notification of selection for award) and Form ST-220-TD (with the DTF). These requirements must be met before a contract may take effect. Further information can be found at the [New York State Department of Taxation and Finance’s website](#). Forms are available through these links:

- [ST-220 CA](#)
- [ST-220 TD](#)

**Please note that although these forms are not required as part of the bid submissions, NYSED encourages bidders to include them with their bid submissions to expedite contract execution if the bidder is awarded the contract.**

**4.) Assurances**

The State of New York Agreement, Appendix A – Standard Clause for all New York State Contracts, and Appendix A-1 **WILL BE INCLUDED** in the contract that results from this RFP. Vendors who are unable to complete or abide by these assurances should not respond to this request.

The documents listed below are included in **5.) Submission Documents**, which must be signed by the Chief Administrative Officer. Please review the terms and conditions. Certain documents will become part of the resulting contract that will be executed between the successful bidder and the NYS Education Department.

1. Non-Collusion Certification
2. MacBride Certification
3. Certification-Omnibus Procurement Act of 1992
4. Certification Regarding Lobbying; Debarment and Suspension; and Drug-Free Workplace Requirements
5. Offerer Disclosure of Prior Non-Responsibility Determinations
6. NYSED Substitute Form W-9 (If bidder is not yet registered in the SFS centralized vendor file.)
7. Iran Divestment Act Certification

**M/WBE Documents – (the forms below are included in 5.) Submission Documents)**

Please return the documents listed for the compliance method bidder has achieved:

**Full Participation-No Request for Waiver**

**Signatures Required**

1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan

**Partial Participation-Partial Request for Waiver**

**Signature Required**

1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan
5. **M/WBE 101** Request for Waiver
6. **M/WBE 105** Contractor's Good Faith Efforts

**No Participation-Request for Complete Waiver**

**Signature Required**

1. M/WBE Cover Letter
2. **M/WBE 101** Request for Waiver
3. **M/WBE 105** Contractor's Good Faith Efforts

## STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the People of the State of New York, acting through John B. King, Jr., Commissioner of Education of the State of New York and Chief Executive Officer of the Board of Regents of the University of the State of New York, party of the first part, hereinafter referred to as the (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

### WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

### I. Conditions of Agreement

A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.

B. Funding for the first PERIOD shall not exceed the funding amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.

C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.

D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (The attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT.

To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.

E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.

G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

### II. Payment and Reporting

A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

### III. Terminations

A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.

B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.

C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.

D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.

F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

### IV. Indemnification

A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

### V. Property

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

### VI. Safeguards for Services and Confidentiality

A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.

**Appendix A**  
**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, 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. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every

invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs

of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily

authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business

Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
[NYS M/WBE Directory](#)

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach

and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE**

**LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.**

To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.**

By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("[Prohibited Entities List](#)").

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an

opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

(January 2014)

## APPENDIX A-1

### Payment and Reporting

- A. In the event that Contractor shall receive, from any source whatsoever, sums the payment of which is in consideration for the same costs and services provided to the State, the monetary obligation of the State hereunder shall be reduced by an equivalent amount provided, however, that nothing contained herein shall require such reimbursement where additional similar services are provided and no duplicative payments are received.
- B. Variations in each budget category not exceeding ten percent (10%) of such category may be approved by the Commissioner of Education. Any such variations shall be reflected in the final expenditure report and filed in the Office of the State Comptroller. Variations in each budget category which do exceed ten percent (10%) of such category must be submitted to the Office of the State Comptroller for approval.
- C. For each individual for whom costs are claimed under this agreement, the contractor warrants that the individual has been classified as an employee or as an independent contractor in accordance with 2 NYCRR 315 and all applicable laws including, but not limited to, the Internal Revenue Code, the New York Retirement and Social Security Law, the New York Education Law, the New York Labor Law, and the New York Tax Law. Furthermore, the contractor warrants that all project funds allocated to the proposed budget for Employee Benefits, represent costs for employees of the contractor only and that such funds will not be expended on any individual classified as an independent contractor.

### Terminations

- A. The State may terminate this Agreement without cause by thirty (30) days prior written notice. In the event of such termination, the parties will adjust the accounts due and the Contractor will undertake no additional expenditures not already required. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder.
- B. SED reserves the right to terminate this Agreement in the event it is found that the certification by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, SED may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

### Responsibility Provisions

#### A. General Responsibility Language

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Education or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

#### B. Suspension of Work (for Non-Responsibility)

The Commissioner of Education or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Education or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

#### C. Termination (for Non-Responsibility)

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate SED officials or staff, the Contract may be terminated by the Commissioner of Education or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Education or his or her designee to be non-

responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

### Property

- A. The Contractor shall maintain a complete inventory of all realty, equipment and other non-expendable assets including, but not limited to, books, paintings, artifacts, rare coins, antiques and other collectible items purchased, improved or developed under this agreement. The Contractor shall submit a copy of the inventory in a form identical to or essentially similar to, Exhibit A annexed hereto. The term "non-expendable assets" shall mean for the purposes of this agreement any and all assets which are not consumed during the term of this agreement and which have a cost of One Thousand Dollars (\$1,000) or more.

Inventories for non-expendable assets must be submitted with the final expenditure report. In addition to or as part of whatever rights the State may have with respect to the inspection of the Contractor, the State shall have the right to inspect the inventory without notice to the Contractor.

The Contractor shall not at any time sell, trade, convey or otherwise dispose of any non-expendable assets having a market value in excess of Two Thousand Dollars (\$2,000) at the time of the desired disposition without the express permission of the State. The Contractor may seek permission in writing by certified mail to the State.

The Contractor shall not at any time use or allow to be used any non-expendable assets in a manner inconsistent with the purposes of this agreement.

- B. If the Contractor wishes to continue to use any of the non-expendable assets purchased with the funds available under this agreement upon the termination of this agreement, it shall request permission from the State in writing for such continued use within twenty-five (25) days of the termination of this agreement. The Contractor's request shall itemize the non-expendable assets for which continued use is sought. The State may accept, reject or accept in part such request. If the request for continued use is allowed to any degree, it shall be conditioned upon the fact that said equipment shall continue to be used in accordance with the purposes of this agreement.

If after the State grants permission to the Contractor for "continued use" as set forth above the non-expendable assets are not used in accordance with the purposes of this agreement, the State in its discretion may elect to take title to such assets and may assert its right to possession upon thirty (30) days prior written notice by certified mail to the Contractor. The State upon obtaining such non-expendable assets may arrange for their further use in the public interest as it in its discretion may decide.

- C. Upon termination of this agreement, the State in its discretion may elect to take title and may assert its right to possession of any non-expendable assets upon thirty (30) days prior written notice by certified mail to the Contractor. The State's option to elect to take title shall be triggered by the termination of this agreement or by the State's rejection of continued use of non-expendable assets by the Contractor as set forth herein. The State upon obtaining such non-expendable assets may arrange for their further use in the public interest as it in its discretion may decide.
- D. The terms and conditions set forth herein regarding non-expendable assets shall survive the expiration or termination, for whatever reason, of this agreement.

### Safeguards for Services and Confidentiality

- A. Any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department. The material prepared under the terms of this agreement by the Contractor shall be prepared by the Contractor in a form so that it will be ready for copyright in the name of the New York State Education Department. Should the Contractor use the services of consultants or other organizations or individuals who are not regular employees of the Contractor, the Contractor and such organization or individual shall, prior to the performance of any work pursuant to this agreement, enter into a written agreement, duly executed, which shall set forth the services to be provided by such organization or individual and the consideration therefor. Such agreement shall provide that any

copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department and that such work shall be prepared in a form ready for copyright by the New York State Education Department. A copy of such agreement shall be provided to the State.

- B. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.
- C. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
- D. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have waived its right or remedy.
- E. Expenses for travel, lodging, and subsistence shall be reimbursed at the per diem rate in effect at the time for New York State Management/Confidential employees.
- F. No fees shall be charged by the Contractor for training provided under this agreement.
- G. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- H. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.

The parties to this agreement intend the foregoing writing to be the final, complete, and exclusive expression of all the terms of their agreement.

#### Certifications

- A. Contractor certifies that it has met the disclosure requirements of State Finance Law §139-k and that all information provided to the State Education Department with respect to State Finance Law §139-k is complete, true and accurate.
- B. Contractor certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.
- C. Contractor certifies that no governmental entity has made a finding of nonresponsibility regarding the Contractor in the previous four years.
- D. Contractor certifies that no governmental entity or other governmental agency has terminated or withheld a procurement contract with the Contractor due to the intentional provision of false or incomplete information.
- E. Contractor affirms that it understands and agrees to comply with the procedures of the STATE relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6)(b).
- F. Contractor certifies that it is in compliance with NYS Public Officers Law, including but not limited to, §73(4)(a).

#### Notices

Any written notice or delivery under any provision of this AGREEMENT shall be deemed to have been properly made if sent by certified mail, return receipt requested to the address(es) set forth in this Agreement, except as such address(es) may be changed by notice in writing. Notice shall be considered to have been provided as of the date of receipt of the notice by the receiving party.

#### Miscellaneous

- A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.
- B. If required by the Office of State Comptroller ("OSC") Bulletin G-226 and State Finance Law §§ 8 and 163, Contractor agrees to submit an initial planned employment data report on Form A and an annual employment report on Form B. State will furnish Form A and Form B to Contractor if required.

The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B is due by May 15th of each year and covers actual employment data performed during the prior period of April 1st to March 31st. Copies of the report will be submitted to the NYS Education Department, OSC and the NYS Department of Civil Service at the addresses below.

By mail: NYS Office of the State Comptroller  
 Bureau of Contracts  
 110 State Street, 11<sup>th</sup> Floor  
 Albany, NY 12236  
 Attn: Consultant Reporting

By fax: (518) 474-8030 or (518) 473-8808

Reports to DCS are to be transmitted as follows:

By mail: NYS Department of Civil Service  
 Office of Counsel  
 Alfred E. Smith Office Building  
 Albany, NY 12239

Reports to NYSED are to be transmitted as follows:

By mail: NYS Education Department  
 Contract Administration Unit  
 Room 505 W EB  
 Albany, NY 12234

By fax: (518) 408-1716

- C. Consultant Staff Changes. If this is a contract for consulting services, Contractor will maintain continuity of the consultant team staff throughout the course of the contract. All changes in staff will be subject to STATE approval. The replacement consultant(s) with comparable skills will be provided at the same or lower hourly rate.
- D. Order of Precedence. In the event of any discrepancy, disagreement, conflict or ambiguity between the various documents, attachments and appendices comprising this contract, they shall be given preference in the following order to resolve any such discrepancy, disagreement, conflict or ambiguity:
  1. Appendix A - Standard Clauses for all State Contracts
  2. State of New York Agreement
  3. Appendix A-1 - Agency Specific Clauses
  4. Appendix X - Sample Modification Agreement Form (where applicable)
  5. Appendix A-3 - Minority/Women-owned Business Enterprise Requirements (where applicable)
  6. Appendix B - Budget
  7. Appendix C - Payment and Reporting Schedule
  8. Appendix D - Program Workplan