

**REQUEST FOR PROPOSALS (RFP) #17-001  
NEW YORK STATE EDUCATION DEPARTMENT**

**Title: Provider of Student Growth Measures for Use in Educator Evaluation and Institutional Accountability**

The New York State Education Department (NYSED) is seeking proposals to provide student growth measures for use in Institutional Accountability determinations pursuant to the Commissioner's Regulations §§100.18 and 100.19 and State-provided growth scores for teachers, principals, schools, and districts pursuant to New York State Education Law §3012-c and § 3012-d; and to co-lead a process to review and redesign existing student growth methodologies based on recommendations from the New York State Student Growth Model workgroup, NYSED, and the Board of Regents.

Subcontracting will be limited to thirty percent (30%) of the annual 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 (1) contract pursuant to this RFP. The contract resulting from this RFP is anticipated to begin January 1, 2017 and to end December 31, 2017, with four one-year renewal options.

Components contained in RFP Proposal #17-001 are as follows:

- 1) Description of Services To Be Performed
- 2) Proposal Submission
- 3) Evaluation Criteria and Method of Award
- 4) Assurances
- 5) Submission Documents

Questions regarding the request must be submitted by e-mail to [GrowthRFP@nysed.gov](mailto:GrowthRFP@nysed.gov) no later than the close of business June 14, 2016. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted at <http://www.p12.nysed.gov/comproposals/comproposals.html> no later than June 23, 2016.

The following are the designated contacts for this procurement:

<u>Program Matters</u>	<u>Fiscal Matters</u>	<u>M/WBE Matters</u>
Jennifer Todd	Nell Brady	Joan Ramsey
Email Address:	Email Address:	Email Address:
<a href="mailto:GrowthRFP@nysed.gov">GrowthRFP@nysed.gov</a>	<a href="mailto:GrowthRFP@nysed.gov">GrowthRFP@nysed.gov</a>	<a href="mailto:GrowthRFP@nysed.gov">GrowthRFP@nysed.gov</a>

The following proposal submission packages must be submitted in separately sealed envelopes, as detailed in 2) Project Submission of the RFP, and must be received by NYSED no later than July 12, 2016, by 3:00 p.m.

- A. Submission Documents labeled Submission Documents - RFP #17-001 Do Not Open
- B. Technical Proposal labeled Technical Proposal - RFP #17-001 Do Not Open
- C. Cost Proposal labeled Cost Proposal – RFP #17-001 Do Not Open
- D. M/WBE Documents labeled M/WBE Documents—RFP #17-001 Do Not Open
- E. CD-ROM containing the technical, cost, submission and M/WBE proposals submitted using Microsoft Word. Place in a separate envelope labeled CD-ROM-RFP #17-001 Do Not Open.

The mailing address for all the above documentation is:

NYS Education Department  
Bureau of Fiscal Management  
Attn: Nell Brady, RFP#17-001  
Contract Administration Unit, Room 501W EB  
89 Washington Avenue  
Albany, NY 12234

(Facsimile copies of the proposals are NOT acceptable)

## Table of Contents

Glossary of Terms and Acronyms Used in this RFP.....	5
Section 1. Description of Services to be Performed .....	7
1.1 Context for this Request for Proposals .....	8
1.2 Required Services and Deliverables.....	11
1.2.1 Annual Calculation and Delivery of Production Model Growth Scores .....	11
1.2.2 Development and Delivery of Beta Analyses on Changes to Existing Student Growth Model .....	16
1.3 Additional Project Requirements.....	21
1.3.1 Project Management Requirements.....	21
1.3.2 Quality Control Processes .....	22
1.3.3 Technology Requirements .....	22
1.3.4 Ongoing Vendor Engagement .....	22
1.3.5 Renewal Year Blended Hourly Rate .....	22
1.3.6 Payment Schedule.....	23
1.3.7 Remedies for Breach .....	23
1.3.8 Additional Requirements .....	24
1.4 Security .....	25
1.5 Subcontracting Limit .....	26
1.6 Contract Period .....	27
1.7 Electronic Processing of Payments .....	27
1.8 M/WBE Opportunities .....	27
Section 2. Project Submissions .....	32
2.1 Technical Proposal .....	32
2.2 Cost Proposal .....	35
2.3 M/WBE Documents .....	35
Section 3. Evaluation Criteria and Method of Award .....	36
3.1 Technical Criteria for Evaluating Bids .....	36
3.2 Financial Criteria for Evaluating Bids .....	37

3.3 Method of Award.....	37
3.4 NYSED’s Reservation of Rights.....	38
3.5 Post Selection Procedures .....	38
3.6 Debriefing Procedures .....	38
3.7 Contract Award Protest Procedures .....	39
3.8 Vendor Responsibility .....	39
3.9 Procurement Lobbying Law .....	40
3.10 Consultant Disclosure Legislation .....	41
3.11 NYSED Substitute Form W-9 .....	42
3.12 Workers’ Compensation Coverage and Debarment .....	43
3.13 Sales and Compensating Use Tax Certification (Tax Law, § 5-a).....	44
Section 4. Assurances.....	46
APPENDIX A - STANDARD CLAUSES FOR NYS CONTRACTS .....	51
Appendix A-1 – NYSED Contract Clauses .....	58
Appendix R - DATA SECURITY AND PRIVACY PLAN PROVISIONS .....	64
APPENDIX S - PARENTS’ BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY .....	68
APPENDIX S-1 Attachment To Parents’ Bill Of Rights For Contracts Involving Disclosure of Certain Personally Identifiable Information .....	81

## **Glossary of Terms and Acronyms Used in this RFP**

For the purposes of clarity in this document, the following terms are defined below. Note that these terms can be used to mean different things by practitioners and researchers; however, the following shall constitute the working definitions of these terms for the purpose of this procurement.

**Annual Student Growth:** Education Law § 3012-c(2)(i) and § 3012-d(2)(c) define student growth as the change in student achievement for an individual student between two or more points in time.

**BOCES:** Board of Cooperative Educational Services. A BOCES is a statutory entity that provides shared educational programs and services to its component school districts. There are currently 37 BOCES incorporating all but nine of the 689 school districts in New York State.

**Board of Regents:** The Board of Regents is responsible for the general supervision of all educational activities within the State, presiding over The University of the State of New York and the New York State Education Department. The Board comprises 17 members elected by the State Legislature for five year terms: one from each of the State's 13 judicial districts and four members who serve at large. Regents are unsalaried and are reimbursed only for travel and related expenses in connection with their official duties.

**Classroom Teacher:** Classroom teacher or teacher means a teacher in the classroom teaching service who is a teacher of record as defined in this section, except evening school teachers of adults enrolled in nonacademic, vocational subjects, and supplemental school personnel (i.e., teaching assistants, teacher aides, or pupil personnel providers).

**Institutional accountability:** The process approved by the U.S. Department of Education through New York State's Elementary and Secondary Education Act (ESEA) flexibility waiver for determining schools' achievement of Federal student learning requirements. While this RFP does not include construction of State school accountability measures, some of the analyses and calculations resulting from this work will be used to inform institutional accountability models and resource allocation decisions by offices that support struggling schools. Pursuant to the most recent Reauthorization of the Federal Elementary and Secondary Education Act, known as the Every Student Succeeds Act, states must hold public schools accountable using a measure of student growth or another valid and reliable statewide academic indicator that allows for meaningful differentiation in school performance and may use student growth to hold public high schools accountable for student performance.

**NYSED:** The New York State Education Department.

**Principal or Building Principal:** Principal or building principal shall mean a principal or co-principal of a registered public school or an administrator in charge of an instructional program of a school district or BOCES.

**Student Growth Percentile (SGP):** The result of a statistical model that calculates each student's change in achievement between two or more points in time on a State assessment and compares each student's performance to that of similar students.

**Student/teacher/course linkage:** Determined by NYSED based on data showing which students are assigned to which course/class, teachers, schools, and principals for evaluation purposes. Data will also specify that if a "linkage" between a student/teacher/course does not extend for a full academic year what partial dosage criteria will apply. NYSED will provide the data to the vendor as a variable in units of number of minutes of linkage. NYSED collects sophisticated information to specify the amount of time students and teachers are present in the classroom together to enable more than one teacher in a grade or subject to be linked to a student for evaluation purposes. Variables collected include: course section length (minutes), teacher-student linkage start/end dates, the number of minutes of student enrollment-teacher assignment linkage for the course section, the number of minutes of student-attendance-teacher assignment linkage for the course section (based on student enrollment, teacher assignment, and period student attendance), teacher-student instructional weights, and a student exclusion flag.

**Teacher, principal or school growth score on State assessments:** A score calculated by the vendor, which conforms to requirements of Subpart 30-2 and 30-3 of the Rules of the Board of Regents, as applicable, and is assigned to each teacher, principal, or school based on their growth measures as defined in this section, and any additional adjustments required by policy or empirical evidence. This is currently a number from 0-20.\*\* For some teachers and principals, calculation of this score may require combining results from across different subject areas. NYSED and the vendor will work together to translate growth measures into effectiveness scores. *\*\*Range of scores determined by the Board of Regents and subject to change in the future, including changes resulting from New York State Education Law §3012-d.*

**Teacher, principal, or school growth measures:** This refers to vendor-calculated aggregation of student growth outcomes (expressed as SGP and GRE measures) to a teacher-, principal-, or school-level. The aggregation of student outcomes to educator-level outcomes is based on data about which students are assigned to which teachers for each course/class section and which principals for each school. These measures will be expressed in measures of centrality including means and medians, and measures of dispersion, including standard deviation and ranges, of student growth measures. These measures are used to then assign teacher, principal, and school level growth ratings and scores.

**Teacher(s) of record:** Teacher(s) of record is defined as an individual (or individuals, such as in co-teaching assignments) who has been assigned primary and direct responsibility for a student's learning in a subject/course with aligned performance measures, and as further defined by NYSED.

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

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 in this bid package for your information. Please review all terms and conditions.

## **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 <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.

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 (<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>); 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 [www.oms.nysed.gov/fiscal/MWBE/forms.html](http://www.oms.nysed.gov/fiscal/MWBE/forms.html).

**1.1 Context for this Request for Proposals**

Since the 2012-13 school year, NYSED has been implementing an enhanced student growth model to generate individual student-level growth estimates that are then aggregated to create teacher-, principal-, and school-level growth measures and to calculate State-provided growth ratings and scores. These State-provided growth ratings and scores are currently calculated for teachers of ELA and/or mathematics in grades 4-8; principals and schools that include any of grades 4-8; and principals and schools that include all of grades 9-12. State-provided growth ratings and scores are incorporated into educators’ Annual Professional Performance Reviews (APPR) pursuant to New

York State Education Law §3012-c and, beginning in the 2015-16 school year, New York State Education Law §3012-d.<sup>1</sup>

In December 2015, the Board of Regents adopted regulatory amendments to add §30-2.14 and §30-3.17 to the Rules of the Board of Regents, which provide a four-year transition period for APPRs during which time State-provided growth scores will not be used for employment purposes and will be used for advisory purposes only. This transition period will last through the 2018-19 school year. During this transition period, NYSED expects to convene a workgroup to review the current New York State student growth model and review and recommend any changes to the model that are deemed necessary.

School-level growth measures have also been incorporated into New York State's school and district accountability systems pursuant to Commissioner's Regulations §100.18. These growth measures are used as part of the process for identifying schools as Priority Schools, Focus Schools, Local Assistance Plan Schools, and Rewards Schools and districts as Focus Districts. In addition, in April 2015, the Board of Regents adopted Commissioner's Regulations §100.19, which utilizes school-level growth measures to identify Struggling and Persistently Struggling Schools. Under this regulation, districts must provide evidence that Struggling and Persistently Struggling Schools are making demonstrable improvement on indicators approved by the Commissioner in order to avoid being placed into independent receivership. School growth measures are one of the metrics used to make demonstrable improvement determinations. In addition, pursuant to the most recent Reauthorization of the Federal Elementary and Secondary Education Act, known as Every Student Succeeds Act, states must hold public schools accountable using a measure of student growth or another valid and reliable statewide academic indicator that allows for meaningful differentiation in school performance and may use student growth to hold public high schools accountable for student performance.

With this RFP, the New York State Education Department requests that vendors annually calculate, produce, and deliver State-provided growth ratings and scores for educators for advisory purposes only, as required by §§30-2.14 and 30-3.17 of the Rules of the Board of Regents, and growth measures for institutional accountability purposes, as required by §§100.18 and 100.19. In addition, the vendor will support NYSED efforts to review and strengthen its student growth model by contributing to the Student Growth Model workgroup, and by designing, conducting, and reporting on beta analyses of potential changes to the student growth model recommended by the workgroup, NYSED, and the Board of Regents and the vendor's own technical experts.

In the first year of the contract, State-provided growth ratings and scores will be produced for teachers, principals, and schools with students in grades 4-8 ELA and/or Mathematics and for high school principals and schools<sup>2</sup> with students taking New York State Regents Examinations, according to existing student growth methodologies and based on assessment results from the 2016-17 school year. In the anticipated renewal years of the contract, State-provided growth ratings and scores may

---

<sup>1</sup> Beginning in 2015-16, districts may be implementing APPR plans pursuant to either §3012-c or §3012-d; vendor must be able to produce results in accordance with both sets of requirements, which impact the scoring bands associated with final State-provided growth scores (0-20). For scoring ranges pursuant to §3012-c, please see section 30-2.6(b) of the Rules of the Board of Regents. For scoring ranges pursuant to §3012-d, please see 30-3.4(d) and 30-3.5(c)(4) of the Rules of the Board of Regents.

<sup>2</sup> High school principals and schools receive State-provided growth ratings and scores only if they include all of grades 9-12.

be produced according to revised methodologies, based on any changes to the methodologies recommended by the workgroup, beta modeled by vendor, and adopted by NYSED.

Results from the methodologies developed and produced under this contract will be used as one component of teacher and principal annual professional performance evaluations, reported for advisory purposes only and in aggregated public reporting. Results will also be incorporated into New York State's institutional accountability system.<sup>3</sup> As such, the methodologies currently approved for use, as well as those that will be developed by the vendor, shall be created with the specific intent to be fair, accurate, and as transparent as possible, and to produce reliable estimates of student growth that are valid for the purpose and comparable across students, teachers, principals, schools, and years, in order to contribute to these evaluations and to provide useful information about student learning to individual teachers, principals, and other stakeholders.

There are several challenges about this work, including:

- The student growth model receives high media attention and may be subject to potential litigation; the vendor must be prepared to defend the model, including but not limited to the methodologies underlying the model and any analysis or results of the model.
- Many constituencies throughout the State may provide input into decisions about specifications of any changes to the model, and gaining buy in of diverse stakeholders is essential.
- Substantive modifications to the existing growth model methodology will require approval by the Board of Regents in public meetings.
- New York State has a large and complex education system, with many school districts and other Local Education Agencies.

As a result of such challenges, the vendor selected needs to be able to serve as an adviser and thought partner to NYSED in addition to providing technical expertise and capacity to simply design and deliver results. The Department seeks a vendor with a strong demonstrated track record engaging around complex technical analyses with diverse audiences, and with credibility as experts who can provide State decision-makers with a clear understanding of the implications of the many nuanced decisions that may need to be made. In addition, given the high profile and high stakes nature of this project, the vendor selected must demonstrate experience implementing comprehensive quality assurance strategies to ensure the accuracy and integrity of all results.

The most recent year of the student growth model included the following data:

- 1.45 million valid student records in grades 4-8 in 2014-15, and 1.75 million valid student records in 2013-14 (valid student records are those with two consecutive years of valid assessment results)<sup>4</sup>
- 160,000 valid student scores for the Comprehensive ELA Regents Exam<sup>5</sup>

---

<sup>3</sup> NYSED's current institutional accountability system incorporates school-level unadjusted growth measures for grades 4-8 schools; see section 1.2.1 for a description of the unadjusted measures.

<sup>4</sup> There were 1.75 million valid student records in 2013-14 and similar numbers in earlier years; there was about an 80% student participation rate on State assessment in 2014-15.

- 70,000 valid student scores for the ELA Common Core Regents Exam
- 140,000 valid student scores for the Algebra 1 Common Core Regents Exam
- 750,000 students included in the Growth in Regents Exams passed measure
- 44,000 teachers had at least one student attributed to them and 36,000 met the minimum sample size required to receive a State-provided growth score in 2014-15
- 3,500 principals and 3,700 schools with grades 4-8 had at least one student attributed to them (slightly fewer principals and schools met the minimum sample size required to receive a State-provided growth score)
- 1,300 principals and 1,400 schools with all of grades 9-12 had at least one student attributed to them; (slightly fewer principals and schools met the minimum sample size required to receive a State-provided growth score)

## **1.2 Required Services and Deliverables**

### **1.2.1 Annual Calculation and Delivery of Production Model Growth Scores**

Beginning in Year 1 of the contract, and anticipated in each renewal year thereafter, vendor will calculate and deliver State-provided growth scores for all educators and schools covered by the approved production model methodologies. Such methodologies currently cover teachers, principals, and schools with students in grades 4-8 taking the State ELA and/or math assessments and high school principals and schools with students taking New York State Regents Examinations. In Year 1 of the contract, vendor must calculate and deliver State-provided growth scores based on results from the 2016-17 school year. It is expected that 2016-17 results will be based on the student growth methodologies currently approved for implementation, and used to produce results based on 2015-16 school year data.

Vendor will be provided detailed business rules and programming to implement production methodologies used for State-provided growth score calculations based on 2015-16 school year data. In renewal years, vendor will update and submit for approval revised detailed business rules that account for any additional changes to the student growth methodology beta modeled by the vendor and approved by NYSED.

Mathematical models using test scores from State assessments including the grades 4-8 ELA and math assessments are currently in use to annually calculate individual student-level growth measures (currently expressed as student growth percentiles, or SGPs) and educator and school growth measures (currently expressed as mean growth percentiles, or MGPs) for use in the State's educator evaluation system and institutional accountability system. Mathematical models using Regents Examination scores from Algebra and ELA and Regents Examination completion rates of grades 9-12 students are currently in use to annually calculate individual student-level growth measures (currently expressed as student growth percentiles, or SGPs, and Growth in Regents Examinations passed

---

<sup>5</sup> Beginning in 2015-16, the growth model will no longer include the Comprehensive ELA Regents Exam; all results will be based on the Common Core-aligned Regents Exam.

measures, or GREs) and high school principal and school growth measures (MGPs and GREs) for use in the State's educator evaluation system.

Individual student-level growth measures must be produced as both unadjusted and adjusted measures. Unadjusted growth measures are based solely on student prior achievement data and adjusted measures are based on additional student, class/course, and/or school characteristics. Results from these measures shall be attributed to teachers, principals, schools, and districts based on student linkage data submitted by school districts and BOCES and according to student linkage business rules to generate educator- and school-level growth measures. State-provided growth ratings (Highly Effective, Effective, Developing, Ineffective, or "HEDI") and scores (0-20) must then be assigned to teachers, principals, and schools according to existing methodologies (full details of the existing New York State growth model are available here

<https://www.engageny.org/resource/technical-report-growth-measures-2014-15>).

In addition to calculating outcomes on all unadjusted and adjusted growth measures and providing all required State-provided growth ratings and scores, vendor must deliver to NYSED data files containing results for educators and schools statewide, as well as district-specific data files, in a format agreed upon by NYSED. Vendor must also deliver state- and district-level data files containing the underlying student data used to calculate results and generate State-provided growth ratings and scores.

Vendor must be able to provide state-level results files and present an overview of such results to NYSED for review and approval no later than 5 weeks after receiving data files from NYSED, for each year of the contract. If needed, results may be delivered separately for grades 4-8 and 9-12, such that grades 4-8 results are delivered within 5 weeks of receiving assessments results for those grades and grades 9-12 results are delivered within 5 weeks of receiving Regents Examination results. Vendor can anticipate receipt of student assessment data for grades 4-8 ELA and math in early July, and delivery of Regents Examination data in mid-July. See 1 through 4 below for details regarding these deliverables.

#### **Deliverables and detailed requirements:**

**Deliverable 1: Calculation and delivery of State-provided growth results.** Vendor will annually calculate and deliver State-provided growth results for teachers, principals, and schools statewide. Successful completion of this deliverable requires each of the following:

- a. **Data preparation and file management.** Annually, vendor will implement into the business rules all approved modifications to the models and prepare and maintain data layouts containing specifications for data files transferred to/from NYSED. Vendor will process source data files received from NYSED in preparation for student growth score calculations, and will provide NYSED with interim output files summarizing the results of the file preparation as a quality assurance mechanism.
- b. **Calculate results.**
  - i. **Student-level growth score calculations.** Annually, vendor will calculate adjusted and unadjusted student growth results (currently expressed as SGP and GRE

measures) using the methodologies approved for implementation in the current school year.

- ii. **Educator- and school-level growth measures and growth ratings and scores.** Annually, vendor will aggregate adjusted and unadjusted student growth results to calculate teacher, principal, and school-level growth measures (currently expressed as MGPs and GREs) using student-linkage rules approved for implementation in the current school year; vendor will assign teacher, principal, and school growth ratings and scores based on classification rules approved for use in the current school year.
- c. **Deliver data files.** Annually, vendor will produce and deliver to NYSED statewide data files containing the outcomes calculated in b.i-ii above, in a format agreed upon by NYSED. Vendor will provide the same data files subset for each individual Local Educational Agency (LEA) for distribution to the field. Final data files must be delivered within 5 weeks of receiving assessment results from NYSED. Output must include the student growth results of sub-groups of students, including but not limited to the lowest and highest prior achieving students, economically disadvantaged students, students with disabilities, and students with limited English proficiency.
- d. **Redelivery of data files.** Only if deemed necessary by NYSED, vendor will accept updated source data for a segment of educators and/or schools and recalculate growth scores and reproduce relevant data files. Such a scenario is not anticipated, but in rare instances that missing or mis-scored assessment results are discovered after assessment records were transferred to the vendor, vendor must have in place processes to accept revised or additional assessment results and incorporate them into student growth scores for applicable educators and schools. State-provided growth data files will be redelivered within a reasonable timeframe to be determined in conjunction with NYSED based on the amount of data being rerun.

**Deliverable 2: Presentation of results.** Vendor will annually deliver and present via teleconference a summary of growth model results for NYSED senior management and other stakeholders identified by NYSED, as requested. Presentation of results will include, at minimum: information about data processing; overview of the model calculations and model fit, including ensuring model fit at the tail ends of the distribution; distributions of growth measures, growth ratings, and growth scores at all levels and by grade/subject where appropriate; impact/sensitivity analyses by student subgroups, school type (such as charter and non-charter; elementary, middle, and high school, etc.), school size, and classroom characteristics; and other impact analyses required by NYSED and/or suggested by vendor. Results presentation must be delivered on the same day as results data files.

**Deliverable 3: Growth model documentation.** Vendor must develop, maintain, and deliver annual updates to documentation of growth model methodologies to meet the needs of several different audiences. Documents will be reviewed and approved by NYSED, and vendor will prepare revised and final versions for public distribution based on NYSED feedback:

- e. **General public.** Documentation for the general public should provide a high level overview of what the public needs to know to understand the objectives and key concepts behind growth modeling. The target audience is parents and other non-practitioners. This audience will benefit from clear and comprehensive explanations of what the model is measuring, how the model works, and why measures of growth are included in institutional and educator accountability systems. See for example the current “Growth Scores

Explained” video, <https://www.engageny.org/resource/animated-video-student-growth-on-state-tests-2012-13>.

- f. **Practitioners/Educational Users.** Educational user documentation should specify what a user needs to know to understand the objectives and key concepts behind growth modeling, the key inputs and business rules applied to calculate measures, and how to interpret the output of each growth measure for purposes including evaluation, professional development, instructional and human capital planning. Documentation for this audience must include the following:
- i. **High Level User’s Guides.** User documentation should build upon existing User’s Guides (<https://www.engageny.org/resource/resources-about-state-growth-measures>), which introduce the key concepts behind the growth modeling through key ideas, examples, and other tutorial material including frequently asked questions.
  - ii. **Reference Manual.** A more in depth Reference Manual, which more precisely and completely fills in the technical details for educational users, will also be developed by the vendor. The target audience for this manual will be teachers, administrators, and other educational staff who will access student growth model results and use the data for various professional purposes, including but not limited to those uses described above.
  - iii. **Video Tutorials.** Vendor must also develop one or more video tutorials that correspond with the written Reference Manual and can be viewed by practitioners in an asynchronous manner.
  - iv. **Reporting Templates.** Vendor will develop reporting templates that can be used by district staff to create summaries and visualizations of student growth results at the student, teacher, principal, school, or district level based on the data provided to them in 1c., above. Specifications for reporting templates should include similar information to that contained in the current online reporting system, described and pictured in the Growth Reporting System User Guide and FAQ (available here: <https://www.engageny.org/resource/secure-online-growth-reporting-system>).

User’s Guides, Reference Manuals, and related tutorial recordings, and reporting templates must be maintained and updated annually as needed to reflect the most recent information related to the growth model. Documentation for educational users must be delivered and approved by NYSED within two (2) weeks of delivering final results files to NYSED.

- g. **Technical Users.** Technical users include data or policy analysts or educational researchers. Documentation for this group will provide full specifications of the growth models in the detail typically expected by industry standards for this form of research and statistical analysis. It should contain enough information for knowledgeable statisticians and educational researchers to be able to replicate the calculations in the models (if they had access to the student and educator data used in the model). Rationale for design decisions and choices made around business rules should be explained fully. This documentation should build upon existing Technical Reports (<https://www.engageny.org/resource/technical-report-growth-measures-2014-15>).

Documentation for technical users must be delivered within two (2) months (and no later

than October 15 of each year) of delivering final results files to NYSED. Documentation may require final editing and must be approved by NYSED before considered final.

- h. **Future Implementers.** Technical documentation of all methodological specifications of the growth models must be provided to NYSED to allow for replication of all calculations by third-party experts and to ensure that the initiative is sustainable by skilled staff or other providers at the end of this contract, including code used for model implementation and results generation. Code should be fully annotated, containing documentation that specifies how the components are implemented, including coding details and design decisions that are not obvious from the code. Technical documentation of the specifications of each component of the growth model must be maintained throughout the contract term and shared with NYSED on an ongoing basis as updates are made. Final versions of the specifications implemented during each year of the contract should be delivered, with corresponding programming code, within two (2) weeks of delivering final results files to NYSED.

**Deliverable 4: Planning Meetings/Knowledge Transfer.**

- a. In all years prior to the final year of the contract, the vendor will participate in annual in-person planning meetings with NYSED staff to review and finalize scope of work and priorities for the coming contract year. These meetings will occur at the New York State Education Department offices in Albany, NY, and last no more than two days. This meeting will occur at the beginning of the contract for Year 1 (approximately February) to plan for the Year 1 work. It will also occur at the end of Year 1 (and at the end of subsequent contract years) (approximately November) to plan for the following year (see the timeline for Services 1.2.1).
- b. During the final year of the contract (anticipated to be year 5), vendor shall organize, develop, and lead knowledge transfer and training sessions for NYSED-designees on the student growth methodology and its implementation. It is expected that such knowledge transfer will take place over up to two days, and will take place at NYSED offices with approximately 5-10 NYSED staff members.

It is anticipated that Deliverables 1 – 4 and associated costs in renewal Years 2-5 will be the same as those outlined above (1-4 in Section 1.2.1 of this RFP) and in the cost proposal for Year 1.

**High Level Timeline for Annual Delivery of Growth Scores**

	<b>Year 1*</b>
January - June	Data preparation and file management based on approved methodologies
June - August	Calculation of results
August	Delivery of data files and results presentation
August - September	Redelivery of updated results (only in the unlikely event it is deemed necessary by NYSED)
September - October	Delivery of results documentation

\*Renewal Years 2-5 are expected to follow the same high level timeline.

### **1.2.2 Development and Delivery of Beta Analyses on Changes to Existing Student Growth Model**

New York State has the desire to ensure its student growth model remains valid, reliable, fair, and aligned with the most up to date best practices in the field based on rigorous research. While NYSED, through the work outlined in Section 1.2.1 of this RFP, will deliver State-provided growth score results for use in APPR according to existing methodologies in Year 1 of the contract, we also seek to undertake a comprehensive review of our current growth model, including ensuring model fit at the tail ends of the distribution, and are considering potential significant revisions to the model design and its implementation. Under this service, the vendor will support those efforts and conduct beta analyses of changes to the student growth model and its implementation that are recommended by the Student Growth Model workgroup for NYSED to consider adopting in future years of the contract. Vendor will also develop a review and verification process through which preliminary results may be verified by educators.

In support of efforts to review and potentially revise its student growth model, NYSED expects to convene an advisory Student Growth Model workgroup of technical experts and practitioners from the field to consider a number of potential changes. This workgroup will begin meeting in spring 2017, and may provide recommendations for components of the student growth model for which changes should be considered and modeled for potential adoption in future revised methodologies.

The vendor must develop options for technical changes for NYSED to consider based on the recommendations made by the workgroup and its own expertise and experience.<sup>6</sup> It is expected that the technical changes recommended by the vendor for beta modeling will be in line with current research and best practices related to measuring student growth and/or educator value-added measures. Upon agreement by NYSED and the workgroup, vendor will conduct feasibility analyses and beta modeling of model modifications or redesign in the areas prioritized by the workgroup.

While workgroup recommendations for potential changes to the growth model and/or methodology for beta testing are not expected to be made until spring 2017, NYSED expects that areas for review will include:

- **Development of an alternative statistical model to calculate student growth.** NYSED's currently approved methodology uses a covariate adjustment model to calculate student growth on State assessments. If recommended by the workgroup, vendor must develop methodology to calculate student growth based on an alternative statistical model, such as a model that supports determinations about *adequate* growth rather than *relative* growth. Based on workgroup recommendations, vendor will provide input on most appropriate statistical model to accomplish workgroup goals, and will develop a methodology to recalculate growth score results under such

<sup>6</sup> Technical details on NYSED's current student growth model are available here:  
<https://www.engageny.org/resource/technical-report-growth-measures-2014-15>.

model. Vendor will implement revised methodology and present to NYSED and workgroup on results, including comparison of results generated under original and revised methodologies for potential inclusion.

- **Development of revised growth measure(s) for high school principals.** If recommended by the workgroup, vendor must develop revisions of growth models used for principals and schools with students in grades 9-12. Currently, growth measures for principals and schools at the high school level are based on student growth on the Regents Exams in Algebra I and English Language Arts, and on student growth in terms of the number of Regents Exams passed from year to year. Vendor must consider the goals of the measure, and recommend alternative or additional growth measures covering high school grade levels. Vendor must develop and beta model the methodology to calculate such new growth measure, and report results to NYSED and the workgroup.
- **Enhancement of teacher- and principal- student linkage rules.** If recommended by workgroup, vendor must develop potential revisions to current student linkage rules that meet the requirements of the workgroup. Such revisions may include changes to minimum enrollment/linkage requirements for students to be attributed to an educator or school; enhancement of methodology to account for co-teaching scenarios; inclusion or exclusion of student attendance data, etc. Vendor will beta model the revised linkage rules and report to NYSED and the workgroup on results, including comparisons of results between existing and revised linkage rules.
- **Modifications to the classification process used to assign HEDI ratings and scores.** Based on workgroup recommendations, vendor must develop alternative methods for assigning growth ratings (HEDI) and scores (0-20) to educators based on their student growth results. Such revisions may be based on such goals as permitting any number of educators to receive any rating result in a given year, or other goals as recommended by the workgroup. Vendor will beta model alternative classification processes, and report to NYSED and the workgroup the results, including comparisons of results to those generated under existing classification rules.
- **Addition or replacement of model covariates.** Based on workgroup recommendations, and vendor's review of current model covariates, vendor will model the inclusion of additional student- and course- or school-level covariates that can improve model effectiveness, including the possible inclusion of race/ethnicity and/or gender, and will recommend whether existing covariates be retained or removed from the model to maximize precision of results.

It is expected that beta modeling in each of the five areas above will take place during Year 1 of the contract, and that any recommended changes resulting from the beta modeling will be approved by NYSED for incorporation into the operational growth model implemented in 2017-18. At the end of Year 1, and each anticipated renewal contract year thereafter, NYSED will identify, and negotiate with the vendor, additional model enhancements to beta test the following year.

In addition, in collaboration with NYSED, vendor must also develop a process for the delivery of preliminary results files to educators in the field. Currently, educators review and verify their student roster data prior to the transfer of such data to the vendor. NYSED desires there to be an additional

opportunity for educators to review and verify a comprehensive set of processed data used in calculating their final State-provided growth scores, including reviewing the final student roster of students linked and attributed to each educator, student demographics, and student assessment results. The review and verification process must include the delivery to districts/BOCES of preliminary results files, including student-level files, containing the data described above; the acceptance of updated files as needed should some data be determined to be inaccurate or missing; and the recalculation and redelivery of final State-provided growth scores based on reviewed and verified data. Until the process is approved for implementation in production model State-provided growth calculations, this work will not impact any State-provided growth results provided to districts/BOCES under Section 1.2.1 of this RFP. Development and full implementation of this process is expected to occur over a 3-year time frame. NYSED expects this review and verification process to be developed and tested in a limited number of districts in Years 1 and 2, and incorporated into the annual calculation and delivery of production model growth scores by Year 3.

See 5 through 9 below for details regarding beta analysis deliverables.

#### **Deliverables and detailed requirements:**

**Deliverable 5: Comprehensive model review and beta analysis plan.** Vendor shall complete a comprehensive review of the current New York State growth models and the areas for its modification recommended by NYSED and/or its workgroup, and, based on these recommendations and the vendor's own expertise, within 60 days of entering into contract, shall submit a detailed analytic plan specifying vendor's procedures for examining potential modifications to the growth model in each of the prioritized areas and the project timeline for completing each beta modeling element.

- i. It is expected that beta modeling based on NYSED and work group members' recommendations will be completed during each year of the contract. In each renewal year, NYSED and vendor will negotiate to define beta analysis of potential enhancements to the growth models. Vendor will develop a beta analysis plan based upon the negotiated analyses.
- j. It is expected that the vendor will work in consultation with NYSED during the 60 day period at the beginning of each contract year to develop the analysis plan and timeline, and will have incorporated NYSED feedback into the plan submitted within 60 days of entering into the contract.
- k. Vendor will not begin work on beta modeling until NYSED has approved the model review and beta analysis plan each year.
- l. In Year 1, questions addressed in the beta analysis plan may be further defined after the 60 day planning period, in consultation with NYSED, based on workgroup recommendations.

**Deliverable 6: Calculation and delivery of beta modeling results.** Vendor may complete these steps separately for each beta analysis conducted:

- m. **Data preparation and file management.** Vendor will prepare data layouts containing specifications for data files transferred to/from NYSED in order to complete beta analyses. Vendor will process source data files received from NYSED in preparation for student growth score calculations, and will provide NYSED with interim output files summarizing the results of the file preparation as a quality assurance mechanism, in a format agreed upon by NYSED.
- n. **Calculate results.**

- i. **Student-level growth score calculations.** Vendor will calculate student growth scores using the approved beta modeling methodologies from its analysis plan.
- ii. **Educator- and school-level growth measures and growth ratings and scores.** Vendor will use student growth results to calculate teacher, principal, and school-level growth measures using student-linkage rules approved for implementation in the current school year (and, as relevant, revised student linkage rules based on approved beta modeling methodologies); vendor will assign teacher, principal, and school growth ratings and scores based on classification rules currently approved for use (and, as relevant, those revised classification rules based on approved beta modeling methodologies).
- o. **Deliver data files.** Vendor will produce and deliver to NYSED statewide data files containing the outcomes calculated in b.i.-ii. above. Output must include the student growth results of sub-groups of students, including but not limited to the lowest and highest prior achieving students, economically disadvantaged students, students with disabilities, and students with limited English proficiency.

**Deliverable 7: Presentation of results.** Vendor may complete this step separately for each beta analysis completed. Vendor will develop and deliver results presentation(s) that include summaries of beta modeling results for NYSED senior management and other stakeholders. Presentation of results will include, at a minimum, information about data processing; overview of model calculations and model fit; distributions of growth measures, growth ratings, and growth scores at all levels and by grade/subject where appropriate; impact/sensitivity analyses by student subgroups, school type, and classroom characteristics; comparisons between the outcomes for each methodology included in the beta analysis and the current student growth methodology; and other impact analyses required by NYSED and/or suggested by vendor. Vendor will also provide recommendations as to any modification to the existing methodology NYSED should consider adopting, including the rationale for such recommendations. Vendor will present results to NYSED and any relevant stakeholders identified by NYSED via teleconference.

**Deliverable 8: Beta modeling documentation.** Vendor must annually develop, maintain, and deliver documentation of methodologies included in beta analyses. Technical documentation of all methodological specifications of the beta analyses must be provided to NYSED, including code used for beta model implementation and results generation. Code should be fully annotated, containing documentation that specifies how the components are implemented, including coding details and design decisions that are not obvious from the code. Technical documentation of the specifications of each component of the beta analyses must be maintained and shared with NYSED on an ongoing basis as updates are made, and final versions of the specifications implemented should be delivered, with corresponding programming code, within two (2) weeks of delivering beta modeling results files to NYSED.

**Deliverable 9: Review and verification process development.** In collaboration with NYSED, vendor must develop and test a process by which preliminary student growth results generated for service 1.2.1 will be shared with districts/BOCES for review and verification, and develop processes to accept corrections to the source data and incorporate them into revised and final State-provided growth results.

- p. **Proposed process development.** Through regular teleconference meetings with an internal NYSED workgroup (approximately monthly), vendor will propose a process by

which to allow district/BOCES to review and verify all source data used in the calculations of their State-provided growth score, such that each educator is able to review the students contributing to his/her score as well as the students' assessment results, demographics, and other factors that contribute to the student level growth result (please refer to the Technical Report for full details on the "similar student" variables currently in use).

- q. **Year 1 test.** In year 1, vendor must test the review and verification process with a select group of districts, to be identified by NYSED (no more than 5). The process may be adjusted as needed based on results of the Year 1 test.
  - i. Deliver preliminary results to sample districts
  - ii. Accept data revisions
  - iii. Deliver final revised results to sample districts
- r. **Year 2 test.** In year 2, vendor will test again the review and verification process with a group of districts to be identified by NYSED (expected to be 20).
  - i. Deliver preliminary results to sample districts
  - ii. Accept data revisions
  - iii. Deliver final revised results to sample districts
- s. **Final process development.** Based on results of the review and verification process tested in years 1 and 2, vendor will propose final process by which preliminary student growth results will be shared with districts/BOCES for verification and by which vendor will accept corrected data and incorporate them into final production model State-provided growth results. Upon NYSED approval, the review and verification process will be incorporated into the Year 3 Calculation and Delivery of Production Model Growth Scores, per Section 1.2.1 of this RFP.

NYSED anticipates that Deliverables 5-9 conducted during each renewal year will not exceed an amount of \$350,000 per year. NYSED expects that Deliverables 5-8 in each renewal year will be less extensive than those completed in Year 1, although comparable in scope. At the end of each year, NYSED and the vendor will negotiate the specific beta analyses to be completed during the next renewal year.

**High Level Timeline for Beta Analyses of Growth Model Changes**

	<b>Year 1*</b>
January - February	Development and delivery of beta analysis plan
March - December	Calculation and delivery of beta modeling results, beta modeling documentation, results presentations and recommendations for modifications to adopt will have been provided to NYSED, according to project timeline negotiated with NYSED

\*Renewal Years 2-5 are expected to follow the same high level timeline.

**High Level Timeline for Development and Testing of Review and Verification Process**

January - June 2017	Development of review and verification process/protocols
---------------------	--

August - September 2017	Year 1 review and verification process testing
September 2017 - June 2018	Updates to review and verification process/protocols (as needed)
August - September 2018	Year 2 review and verification process testing
September 2018 - June 2019	Final review and verification process development

**1.3 Additional Project Requirements**

This section describes the additional requirements that must be fulfilled throughout the duration of the contract in order to successfully meet NYSED’s requirements, in support of and in addition to the Deliverables described in Sections 1.2.1 and 1.2.2. The vendor is required to perform such services as described below.

**1.3.1 Project Management Requirements**

Vendor will provide overarching management of the entire Student Growth Measures project including work planning, issue tracking and escalation, and status monitoring. Vendor’s project management approach must also meet the following minimum requirements:

1. Project staffing: Vendor will provide clearly identified and accountable staff resources to ensure completion of all deliverables and to consult and advise as needed with NYSED so that NYSED can make timely and informed decisions. Vendor will designate one of its team members as Project Manager who will be responsible for all project activities and the overall success of the project. It is expected that the vendor Project Manager will be a full-time position in Year 1 of the contract, when vendor will be responsible for both the calculation and delivery of State-provided growth scores based on 2016-17 school year results and for completing beta analyses to inform potential changes to the growth model. Vendor will maintain continuity of the team staff throughout the project. Changes in key staff require prior approval by NYSED. Replacement staff must have comparable skills and must be provided at the same or lower rate.
2. Project schedule: Vendor Project Manager will develop and maintain a comprehensive project schedule that breaks down all tasks associated with the project, including the beginning and end dates of each task and how many personnel are associated with the task. This schedule will be submitted to NYSED within 60 days of entering into contract.
3. Project status reporting: Vendor Project Manager will lead weekly project status teleconference meetings with appropriate NYSED and vendor staff. Vendor Project Manager will provide weekly written project status reports to designated NYSED project manager that identify tasks to be performed, tasks that have been performed, and risks or issues that surfaced during the week. The status report will be provided in a format mutually agreed on by NYSED and the vendor.
4. Project risk assessment: Vendor must maintain an inventory of project risks identified during the development of the project schedule and those that arise during project status reporting. Vendor will work with NYSED to develop appropriate risk mitigation approaches and identify what risks will result in project scope changes.

5. Project management change process: Vendor will develop with NYSED a change management process that provides methods to modify the project scope, schedule, deliverables, or staffing plan. All scope changes are subject to the prior review and approval of NYSED Fiscal Management and the Office of the State Comptroller (OSC).

### **1.3.2 Quality Control Processes**

1. Internal quality control: Vendor must implement comprehensive internal quality control processes that include, but are not limited to, the following elements. Vendor must implement procedures to verify and ensure that the growth model is run and data files are produced accurately and according to all technical specifications. This will include specific quality control performed upon receipt of each data file transferred from NYSED to vendor; checks conducted after processing and cleaning each source data file in preparation for implementing the model; and on model output and final data files themselves. Vendor will verify that the software applications developed perform as specified and that the output reports and data files accurately reflect the business rules specified by NYSED. Vendor must verify that all data files transferred from vendor to NYSED are accurate and complete, and that all data files received from NYSED are complete and are incorporated into vendor processing accurately and completely. Vendor must also develop and be prepared to implement procedures that permit the acceptance of updated or previously missing data and recalculate growth scores for relevant educators/schools (per Deliverable 1d).
2. Support for NYSED validation studies: NYSED may undertake an independent validation study of its student growth model, and any modifications to the model adopted as a result of beta analyses undertaken as part of this contract. Vendor must provide support for such a study through participation in planning meetings, to take place via phone or webinar, the provision of technical specification materials, and the provision of any data deemed necessary by NYSED.

### **1.3.3 Technology Requirements**

Vendor must make provisions for the transferability of data to NYSED. NYSED prefers that a vendor use non-proprietary software or statistical modeling tools for completion of this work. If such proprietary software or statistical modeling tools must be used, a justification for such use must be provided in the vendor's proposal, and the vendor must give NYSED a license of continued use of such proprietary software or tools for a period of ten (10) years past the termination date of this contract, unless the parties mutually agree otherwise.

### **1.3.4 Ongoing Vendor Engagement**

As part of the ongoing implementation of this project, vendor may be called on to provide information about the student growth model to NYSED and its stakeholders, including possibly presenting to the Board of Regents or a convened workgroup on the student growth model. In the event such engagement requires an in person presentation, NYSED will provide vendor with adequate notice and vendor will provide key project staff.

### **1.3.5 Renewal Year Blended Hourly Rate**

As stated above, it is anticipated that that Deliverables 1 – 4 and associated costs in renewal Years 2-5 will be the same as those outlined above and in the cost proposal for Year 1. At the end of each

year, NYSED and the vendor will negotiate Deliverables 5 – 9 to be completed during next renewal year based upon an expected budget of up to \$350,000 per contract year.

The Blended Hourly Rate Cost Proposal (Bid Form 4) will be used to determine the amounts to be paid for Deliverables 5 – 9 required by NYSED during the renewal years of the contract. Vendors are to submit fully loaded hourly rates that include all labor, overhead and fee costs including but not limited to printing and postage. These rates will be the basis for a blended hourly rate that will be evaluated during the cost-evaluation phase.

Prior to the beginning of each renewal year, a deliverable-based budget will be developed for the work, using an agreed upon number of hours for each Deliverable, multiplied by the blended hourly rate provided in the vendor's cost proposal.

### **1.3.6 Payment Schedule**

The vendor will be required to submit quarterly reports and invoices to NYSED containing the program narrative, dates of services, and an itemized list of activities and costs consistent with the approved Schedule of Deliverables contained in the executed contract. Payments will be made once the quarterly reports are reviewed and project deliverables are determined by NYSED to be adequate. Payment for each Deliverable will be made upon 100% satisfactory completion and approval by NYSED. Payment(s) for subcontractor(s) must list the subcontractor's name(s), payment amount(s), and nature of services provided separately on the invoice submitted. Invoices with incomplete information will be returned to the vendor. Invoices with incomplete information will be returned to the vendor.

The vendor must retain records and accounts, updated on a monthly basis, and must be able to prepare and submit statistical, narrative, and/or financial summaries related to this contract as requested by NYSED.

### **1.3.7 Remedies for Breach**

It is understood and agreed that all rights and remedies set forth in this Agreement shall be in addition to all remedies or actions otherwise authorized or permitted by law. The following penalties will be applied to each breach and may be applied more than once should multiple breaches occur.

- A. In the event the vendor fails to deliver results files according to the timelines prescribed by the contract or agreed to in a modification approved by NYSED, a penalty will be imposed in the amount of 1% of the annual contract budget for the Calculation and Delivery of Production Model Growth Score. The penalty will increase by 1% for each additional week that passes, such that if results are delivered within one week of the deadline, a 1% penalty will be incurred; if results are delivered within two weeks of the deadline, a 2% penalty will be incurred, and so forth.
- B. In the event the vendor's action or inaction results in an error in the Calculation and/or Delivery of Production Model Growth Scores, the vendor must correct the error and provide NYSED with revised calculations and/or scores, and any related documentation

in a timeframe and manner prescribed by NYSED at no cost to NYSED. In addition, the following penalties will be incurred:

- a. Any vendor error that results in the delivery of incorrect State-provided growth scores to any teacher, principal, or school will incur a penalty of 5% of the annual contract budget for the Calculation and Delivery of Production Model Growth Scores (1.a-c in the Bid Form 1 Cost Proposal);
- b. Any vendor error that directly or indirectly results in the delivery of incorrect State-provided growth scores to any teacher, principal, and/or school and impacts 10% or more of that particular group statewide (e.g., an error in the results provided to principals that impacts 10% or more of principals) will incur a penalty of 10% of the annual contract budget for the Calculation and Delivery of Production Model Growth Scores (1.a-c in the Bid Form 1 Cost Proposal).

### **1.3.8 Additional Requirements**

1. Any materials, processes, and products produced for NYSED pursuant to this contract, including but not limited to methodologies, measures, software, code, documentation, growth results, implementation guidance, training materials, evaluation forms, data complications, and reports shall be the sole and exclusive property of the New York State Education Department. Should the vendor use the services of consultants or other organizations or individuals who are not regular employees of the vendor, the subcontract agreement shall provide that any work produced pursuant to the agreement shall be the sole and exclusive property of NYSED.
2. Paragraph #1 of this section shall not apply to proprietary information regarding methodologies or measures that are the property of the vendor at the time the contract resulting from this RFP is executed, or for which a license or other permission for use is required for the vendor to produce the materials. As to such proprietary information, the vendor shall clearly identify such proprietary information and give, or arrange from a third party owner to give, a license to NYSED to continue using such proprietary information solely for NYSED's educational purposes for a period of ten years from the date of termination of this contract.
3. The vendor shall reproduce, use, display, and include copies of NYSED's trademarks, trade name, logos, copyrights, and other intellectual property (collectively, the "Marks") on all copies of materials produced for NYSED. The vendor acknowledges that the Marks are owned solely and exclusively by NYSED, and nothing contained in the resulting contract shall give the vendor any ownership right or interest in such Marks or a right to use the Marks except pursuant to this contract.
4. All vendors must adhere to NYSED's security protocols regarding the transmission of secure materials via encrypted files and the secure shipment of all materials using a carrier that has ground tracking capability. Electronic transfer via e-mail, Internet, or facsimile (FAX) of individual student information or any secure test data is not permitted unless authorized by NYSED to do so on a case-by-case basis.
5. All materials are to be held strictly confidential and must not be copied, duplicated, or disseminated in any manner or discussed with anyone other than persons authorized by NYSED.

6. The vendor and all of its subcontractors performing work on the contract resulting from this RFP must sign a Non-Disclosure Agreement (Appendix B, found in Section 5, Submission Documents) provided by NYSED, assuring the confidentiality of all work and discussions carried out under this contract after the contract is awarded. These signed agreements must be submitted to NYSED prior to the initiation of work under this contract.
7. The vendor agrees to cooperate with NYSED with respect to any challenge to the technical methodology, the results of such methodology and statistical analyses associated with this contract and, if necessary, provide at no expense to NYSED, experts, evidence, witness testimony, or other documentation necessary to refute a challenge to the validity and reliability or any other aspect of the development of the growth model with which the vendor was associated for the duration of the contract and minimum of five years after termination of this contract.
8. Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications 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 New York State Enterprise IT Policy NYS-P08-005 (see <http://www.cio.ny.gov/Policy/NYS-P08-005.pdf>) as determined by quality assurance testing. Such quality assurance testing will be conducted by the 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.
9. As more fully set forth in Section IV of the State of New York Agreement, attached hereto as Appendix A of the submissions document, the terms of which will be incorporated into any contract awarded pursuant to this RFP, Vendor will indemnify and hold harmless NYSED, its employees, officers and agents against any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature arising from Vendor's work under this contract.

#### **1.4 Security**

The vendor must use encrypted files and design, host, and maintain a secure file transfer protocol (FTP) site as a means of file transfer. Access to the NYS test information on this site must be limited to the vendor and NYSED unless further sharing with other parties is authorized in writing by NYSED. Any other electronic transfer via e-mail, Internet, or facsimile (FAX) of individual student information or any secure test materials is not permitted unless authorized by NYSED to do so on a case-by-case basis. When shipping secure materials, the vendor must use a delivery service with online ground tracking capabilities. All shipments between the vendor and NYSED or the vendor's subcontractors must be in locked boxes, which will be supplied by NYSED.

All vendor staff and subcontractors having access to secure or confidential information, including but not limited to test questions, scoring materials, student data and personally identifiable information, shall sign a non-disclosure agreement (Appendix B) and submit to NYSED prior to the initiation of work under this contract.

The vendor and its subcontractors must make appropriate arrangements to securely destroy, consistent with the protocols set forth in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix R, within one year of the completion of activities all printed and computer records of any confidential data or personally identifiable student information that the vendor and any of its subcontractors were given access to so as to perform the tasks described in this RFP.

In their technical proposal, bidders must describe all aspects of their security procedures handling student data and assessment files in their proposals, which must be at a minimum, consistent with the Data Security and Privacy Plan described in Appendix R and the Parents’ Bill of Rights (Appendix S). These security guidelines set forth the management of secure materials and should be reflected in the vendor’s procedures.

The Contractor agrees to comply with FERPA and New York State Education Law § 2-d. The New York State Data Security and Privacy Plan (Appendix R), the Parents Bill of Rights (Appendix S) and the Attachment to the Parents’ Bill of Rights for Contracts Involving Certain Personally Identifiable Information (Appendix S-1) are annexed to this RFP, the terms of which are incorporated herein by reference, and which shall also be part of the Contract.

Bidders should complete items #3 and #6 of the Appendix S-1 and return with their technical proposal for review.

### **1.5 Subcontracting Limit**

Subcontracting will be limited to **30%** of the annual 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 **Section 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.

## **1.6 Contract Period**

NYSED will award one contract pursuant to this RFP. The contract resulting from this RFP will be for a term beginning 01/01/2017 and ending 12/30/2017, with the option of four (4) contract renewals, each for one (1) year periods, dependent upon:

- the successful completion of the first year's activities;
- funds being allocated for the program in the State budget for the period;
- successful negotiation of a scope of continued services (which may simply be the continuation of the same services described in the original agreement);
- successful negotiation of associated costs, (which may have been pre-determined in the original contract language by limiting rate increases to a specific factor);
- the mutual agreement of both parties; and,
- approval of a contract extension agreement by the NYS Comptroller as described in section 3 of Appendix A, which is contained in this document.

## **1.7 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).

## **1.8 M/WBE Opportunities**

### **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 project 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 project. 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. Contractor 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>7</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>8</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, which can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>. 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.
10. Contractor shall submit all necessary M/WBE documents and/or forms as described above as part of their proposal in response to NYSED procurement.
11. The percentage goals established for this RFP are based on the overall availability of M/WBEs certified in the particular areas of expertise identified under this RFP. These goals should not be construed as rigid and inflexible quotas which must be met, but as targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.
12. Contractor shall ensure that enterprises have been identified (M/WBE 102) within the Utilization Plan, and the contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent

---

<sup>7</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>8</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 to Empire State Development (<http://www.esd.ny.gov/MWBE/Certification.html>) by the deadline for submission of proposals for eligibility determination. 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.

indicated in the plan, as to what measures and procedures contractor intends to take to comply with the provisions of the Article.

13. Contractor shall upon written notification from NYSED M/WBE Program Unit as to any deficiencies and required remedies thereof, the contractor, within the period of time specified, will submit compliance reports documenting remedial actions taken and other information relating to the operation and implementation of the Utilization Plan.

14. Where it appears that a contractor cannot, after a good faith effort, comply with the M/WBE participation requirements, contractor may file a written application with NYSED M/WBE Program Unit requesting a partial or total waiver (M/WBE 101) of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements, together with an explanation of the efforts undertaken by the contractor to obtain the required M/WBE participation.

For purposes of determining a contractor's good faith efforts to comply with the requirements of this section or be entitled to a waiver, NYSED shall consider at the least the following:

I. Whether the contractor has advertised in general circulation media, trade association publications and minority-focused and women-focused media and, in such event;

a. Whether or not the certified M/WBEs which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

b. Whether certified businesses solicited by the contractor responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's deadline for submission of proposals.

II. Whether there has been written notification to appropriate certified M/WBEs that appear in the Empire State Development website, found at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.

All required Affirmative Action, EEO, and M/WBE forms to be submitted along with bids and/or proposals for NYSED procurements are attached hereto. Bidders must submit subcontracting forms which:

1) fully comply with the participation goals specified in the RFP; OR

2) partially comply with the participation goals specified in the RFP, and include a request for partial waiver, and document its good faith efforts to fully comply with the percentage goals specified in the RFP; OR

3) do not include certified M/WBE subcontractors or suppliers, and include a request for a complete waiver, and document its good faith efforts to fully comply with the participation goals specified in the RFP.

All M/WBE firms are required to be certified by Empire State Development (ESD) or must be in the process of obtaining certification from ESD. Online Certification can be found at <https://ny.newnycontracts.com/FrontEnd/StartCertification.asp?TN=ny&XID=2029>.

**Failure to comply with the requirements of Article 15-A as set forth under this procurement and in conjunction with the corresponding contract, will result in the withholding of associated funds and other enforcement proceedings set forth under Article 15-A.**

## Section 2. Project Submissions

This section details the submission document or documents that are expected to be transmitted by the vendor to NYSED in response to this RFP. NYSED 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 NYSED. Any subcontractor is also bound by these terms. The submission of these documents will become the basis on which NYSED will judge the respondent's ability to perform the required services as laid out in the RFP.

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)
3. Cost Proposal—Three (3) copies (one bearing an original signature)
4. M/WBE Documents—One (1) copy bearing an original signature
5. Microsoft Word (CD format)—One (1) electronic version with the submission, technical, cost, and M/WBE proposals. Please place the CD-ROM in a separate envelope.

The proposal must be received by July 12, 2016, 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 project plan that 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.

### 2.1 Technical Proposal

The original plus four (4) paper copies and an electronic copy (in MS Office format) on CD of the completed Technical Proposal must be mailed in a separate envelope labeled **RFP #17-001- Do Not Open** and must include the following:

- Cover Letter
- Table of Contents
- Executive Summary

- Project Narrative, including all subsections described below and any relevant attachments or appendices
- Evidence of Organizational Capacity and Demonstrated Effectiveness, including all subsections described below
- Appendix S-1 (Attachment to Parents' Bill of Rights for Contract Involving Disclosure of Certain Personally Identifiable Information) with Item #3 and Item #6 completed (found in Section 5, Submission Documents)
- Request for Exemption from Disclosure Pursuant to the Freedom of Information Law (found in Section 5, Submission Documents)

### **Project Narrative (25 points)**

The proposal should begin with an Executive Summary. It should then include a clear, detailed, rationale and concise description of how the vendor will provide all required services and deliverables described in this RFP, and how the vendor will meet all the additional project requirements described in Section 1.3 of this RFP. The proposal must include the following:

- A clear articulation of how vendor will meet all required deliverables for Service 1.2.1 (Deliverables 1 – 4, including subparts) and articulation of why that approach will best meet NYSED's needs;
- A clear articulation of the technical approach to the data analysis and beta modeling required under Service 1.2.2 (Deliverables 5 – 8, including subparts) and articulation of why that approach will best meet NYSED's needs;
- A clear articulation of how vendor will develop and implement the review and verification process (Service 1.2.2, Deliverable 9);
- A clear articulation of how vendor will meet all additional project requirements detailed in section 1.3, subparts 1.3.1 – 1.3.4;
- A proposed work plan indicating the approximate dates and specific staff needed to complete all services according to the high level timelines specified in sections 1.2.1 and 1.2.2.

### **Evidence of Organizational Capacity and Demonstrated Effectiveness (45 points)**

The proposal should include a clear articulation of the qualifications and proven track-records of project staff, including the following:

- Capacity of organization and key staff, including:
  - Proposed staffing plan, including specification by name of all key staff including program managers, research/analytical staff, and other key support staff (or, if hiring will occur, the planned hiring dates, qualifications sought, and names of potential employees, if known); organizational diagram of key staff and specification of full- or part-time status; resumes and detailed description of responsibilities and qualifications for all key staff;
  - Evidence of organization's capacity to provide statistical modeling services, including any specific staff expertise and computing power needed to handle large data sets and run growth models;

- Demonstration of organizational approach to maintaining current knowledge of state of the art student growth and value-added modeling, particularly in educational environments
- All aspects of their security procedures handling student data and assessment files in their proposals, which must be at a minimum, consistent with the Data Security and Privacy Plan described in Appendix R and the Parents' Bill of Rights (Appendix S).
- Demonstrated track record in the field, including:
  - Description of vendor's experience in conducting research for the development of growth and value-added models including both models that measure the *adequate growth* of a student towards a desired standard of performance as well as models that measure the *relative growth* of a student compared to other students with similar test histories and/or other characteristics;
  - Detailed information about prior work completed at similar scale and scope to this RFP, include experience engaging around complex technical analyses with diverse audiences, and with credibility as experts who can provide State decisions-makers with a clear understanding of the implications of the many nuanced decisions that may need to be made ;
  - List of previous clients and at least two letters of reference from current clients (where current shall mean relevant within the past three years; NYSED staff may not be used as references); the dates of service and a brief summary of the services provided should be included for each reference;
  - Details of industry awards or recognition of the organization or its key staff;
  - Relevant publicly available materials or website citations to prior work;
  - Must demonstrate experience implementing comprehensive quality assurance strategies to ensure the accuracy and integrity of all results
- Approach to supporting and interacting with NYSED and its stakeholders, including:
  - Description of how vendor will organize and support the consultative work required to enable NYSED to make sound choices around the decisions Service 1.2.2 will entail, involving the analysis and testing of different options for modifying existing student growth methodologies;
  - Description of experience and willingness to engage with stakeholders, policy makers, and the press (possibly including in conjunction with litigation), in explaining and defending the results generated by the student growth methodologies and the technical choices made in the adoption of any model modifications that result from vendor's beta analytic work;
  - Description of how vendor staff will work with NYSED on ongoing project management issues, including planning and coordinating status meetings, developing status reports and project plans, notifying NYSED of potential problems or changes to dates or deliverables, and submitting all deliverables according to the agreed upon schedule with appropriate time for NYSED review and approval;
  - Description of how vendor will ensure that the work of the contract has the necessary priority within the organization to be completed with the highest quality and on time.

## 2.2 Cost Proposal

The original plus two (2) copies of each Cost Proposal must be mailed or delivered in a separate envelope labeled **RFP #17-001-Cost Proposal-Do Not Open** and must include the following, all of which are located in the "Submission Documents" section of this RFP:

- 1.) Bid Form Cost Proposal (Forms 1 – 4) **Signature Required**
- 2.) Subcontracting Form
- 3.) M/WBE Subcontracting/Supplier Form

Vendors must provide a cost proposal reflecting the cost for each deliverable. Bidders must bid on ALL deliverables described in this RFP.

Deliverable-based costs will be provided in the cost proposals for deliverables associated with the annual calculation and delivery of production model growth scores (Section 1.2.1; Deliverables 1 – 4, including subparts), the development and delivery of beta analyses on changes to the student growth model and review and verification process (Service 1.2.2; Deliverables 5 – 9). These deliverable-based costs will incorporate all of the following components:

- Total salaries
- Total fringe benefit cost
- Total purchased services (non-employee consultants, subcontractors, subcontractor travel)
- Total non-personal services (supplies and materials, employee travel, etc.)
- Other costs (indirect costs, etc.)

Additionally, all costs associated with ongoing management and implementation of the project should be incorporated into the costs for the deliverables, including costs associated with the additional project requirements specified in Section 1.3 of this RFP.

**The Financial Criteria portion of the RFP will be scored based upon the total of One Year Budget Summary (Bid Form 3) (maximum of 27 points) and the blended hourly rate proposed on the Blended Rate Cost Proposal (Bid Form 4) (maximum of 3 points).**

## 2.3 M/WBE Documents

The original copy of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #17-001-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

**Signatures Required**

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**

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

**Signatures Required**

**Section 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 project as well as New York State contract guidelines and requirements.

**3.1 Technical Criteria for Evaluating Bids**

All eligible proposals received by the deadline will be reviewed using the following criteria. 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. Each evaluation committee member will complete a rubric for each proposal submitted. The scores for the team of evaluators will be averaged to determine the points awarded for the technical proposal.

Proposals receiving an average of sixty percent (60%) or more of the points available for the Technical Proposal (a total average of 42 out of 70 points) will move on to the Financial Review 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.

When the Financial Review process is complete, the Technical Proposal and Financial Review scores will be summed to create a total score. NYSED reserves the right to invite any bidder who is susceptible to an award to participate in a Private Oral Presentation, where vendors will be expected to clarify language in their proposals and answer questions of the review panel. If the oral presentation phase is implemented, vendors will be expected to describe in detail how the capacity of their organization is appropriate for this RFP's scope of work, how prior experience has provided the appropriate technical background to complete this work, and other questions as appropriate. All vendors who participate in the Oral Presentation phase will be asked the same questions and these questions will be provided in advance. The Oral Presentations will be individually scheduled if deemed necessary by NYSED, and will

consist of a 60-75 minute videoconference with NYSED. Details of the logistics and appropriate content to include in the Oral Presentation will be provided by NYSED if an Oral Presentation is deemed necessary. Oral Presentations will be able to receive up to 10 additional points. Reviewers will include comments to describe any additional points awarded for the Oral Presentation. The 10 points will be awarded based on an average of the reviewers' scores on the Oral presentation. NYSED will then calculate a Final Score out of 110 points, based on the score from the Technical Proposal Review, Oral Presentation and the Financial Review.

### Technical Criteria (70 Points)

- **Project Narrative – 25 points**
- **Organizational Capacity and Demonstrated Effectiveness – 45 points**

### 3.2 Financial Criteria for Evaluating Bids

One Year Budget Summary (Bid Form 3) (27 points)

Blended Hourly Rate Cost Proposal (Bid Form 4) (3 points)

**The Financial Criteria portion of the RFP will be scored based upon the total of One Year Budget Summary (Bid Form 3) (maximum of 27 points) and the blended hourly rate proposed on the Blended Hourly Rate Cost Proposal (Bid Form 4) (maximum of 3 points).**

- The **financial portion** of the proposal represents 30 points of the overall score and will be awarded points pursuant to a formula, which awards the highest score of twenty-seven points and three points, respectively, to the proposals for the One Year Budget Summary and Blended Hourly Rate Cost Proposal with the lowest overall costs. The remaining cost proposals will be awarded points based on the relative difference of each proposal against the lowest costs proposed. The resulting percentages are then applied to the maximum point values of twenty-seven points and three points, respectively. These calculations will be computed by the CAU upon completion of the evaluation of the technical proposals by the technical review panel.
- **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 Contracts Administration Unit will recalculate the final score based on the best and final offers submitted.**

### 3.3 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 (and Private Oral Presentation, if applicable) 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.

### **3.4 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) 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 and waive minor irregularities; (4) make an award under the RFP in whole or in part; (5) disqualify any vendor whose conduct and/or proposal fails to conform to the requirements of the RFP; (6) seek clarifications of proposals; (7) use proposal information obtained through the official qualified contact and the State's investigation of a vendor's qualifications, experience, ability or financial standing, and any material or information submitted by the vendor in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP; (8) prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available; (9) prior to the bid opening, direct vendors to submit proposal modifications addressing subsequent RFP amendments; (10) change any of the scheduled dates; (11) negotiate with the successful vendor within the scope of the RFP in the best interests of the State; (12) conduct contract negotiations with the next responsible vendor, should the agency be unsuccessful in negotiating with the selected vendor; (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 120 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 a vendor's proposal and/or to determine a vendor's compliance with the requirements of the solicitation; (16) request best and final offers; (17) cancel the contract based on termination or unavailability of funds.

### **3.5 Post Selection Procedures**

Upon selection, the successful vendor will receive a proposed contract from NYSED. All terms set forth in the selected vendor's technical proposal will be final. The selected vendor may be given an opportunity to reduce its cost proposal in accordance with the agency's right to request best and final offers. 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 vendors may be subject to audit and should ensure that adequate controls are in place to document the allowable activities and expenditure of State funds.

### **3.6 Debriefing Procedures**

All unsuccessful vendors may request a debriefing within five (5) business days of receiving notice from NYSED. Vendors may request a debriefing letter on the selection process regarding this RFP by submitting a written request to the Fiscal Contact person at:

NYS Education Department  
Contract Administration Unit  
89 Washington Avenue  
Room 501W EB

The Fiscal Contact person will make arrangements with program staff to provide a written summary of the proposal's strengths and weaknesses, as well as recommendations for improvement. Within ten (10) business days, the program staff will issue a written debriefing letter to the vendor.

### **3.7 Contract Award Protest Procedures**

Vendors who receive a notice of non-award 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 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 vendor 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 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.

### **3.8 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. For a complete list, see:

[http://www.osc.state.ny.us/vendrep/resources\\_docreq\\_agency.htm](http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm).

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 available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

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 [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) 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).**

### **3.9 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 the following web link:

<http://www.oms.nysed.gov/fiscal/cau/PLL/procurementpolicy.htm>

Designated Contacts for NYSED

Program Office – **Jennifer Todd**

Contract Administration Unit – **Nell Brady**

M/WBE – **Joan Ramsey**

### **3.10 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](#) - see link below). 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.***

Form A: <http://www.osc.state.ny.us/agencies/forms/ac3271s.doc>

**Please note that although this form is 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 form listed above is acceptable.**

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](#) - see link below) 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).***

Form B: <http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>

For more information, please visit OSC Guide to Financial Operations.

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

### **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.

Public Officer's Law Section 73 can be found at [http://www.jcope.ny.gov/about/ethc/PUBLIC OFFICERS LAW 73 JCOPE.pdf](http://www.jcope.ny.gov/about/ethc/PUBLIC_OFFICERS_LAW_73_JCOPE.pdf).

### **3.11 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.

### **3.12 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 at: <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>. 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.**

**3.13 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, available through this link: [www.tax.ny.gov/pdf/publications/sales/pub223.pdf](http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf). Forms are available through these links:

- ST-220 CA: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)
- ST-220 TD: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

**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.**

## Section 4. Assurances

The State of New York Agreement, Appendix A – Standard Clauses for all NYS Contracts, 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 **Section 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
8. M/WBE Documents – **(the forms below are included in Section 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 Mary Ellen Elia, 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)

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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") posted at:  
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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 – NYSED Contract Clauses

### 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. 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 R - Data Security and Privacy Plan
9. Appendix S - Parents' Bill of Rights for Data Privacy and Security
10. Appendix S-1 - Attachment to Parents' Bill of Rights
11. Appendix D - Program Work Plan

Revised 10/20/15

## Appendix R - DATA SECURITY AND PRIVACY PLAN PROVISIONS

1. The individually identifiable data provided to or stored by the Contractor pursuant to this agreement (the "Data") are sensitive, requiring appropriate levels of security to prevent unauthorized disclosure or modification. The Contractor shall take all reasonable measures to protect the confidentiality of the Data as required by federal and state laws and regulations applicable to the Contractor. These may include but are not limited to the New York State Social Services Law, Personal Privacy Protection Law and Education Law §2-d; the federal Social Security Act and Family Educational Rights and Privacy Act; internet security laws; and any regulations promulgated thereunder.
2. The Contractor has full and final responsibility for the security of the Data. The Contractor agrees to implement reasonable technical and physical security measures to ensure the confidentiality, integrity and availability of the Data. Such security measures may be reviewed by the State, both through an informal audit of policies and procedures and/or through inspection of security methods used within the Contractor's infrastructure, storage, and other physical security. The Contractor should review its implementation and maintenance of its security review periodically to protect the data in strict compliance with statutory and regulatory requirements.
3. The Contractor's security measures must also include:
  - a. Provision that access to the Data is restricted solely to staff who need such access to carry out the responsibilities of the Contractor under this agreement, and that such staff will not release such Data to any unauthorized party;
  - b. All confidential Data are stored on computer and storage facilities maintained within Contractor's computer networks, behind appropriate firewalls;
  - c. Access to computer applications and Data are managed through appropriate userID/password procedures;
  - d. Contractor's computer network storing the Data is scanned for inappropriate access through an intrusion detection system. NYSED has the right to perform a site visit to review the vendor's security practices if NYSED feels it is necessary;
  - e. That Contractor have a disaster recovery plan that is acceptable to the State;
  - f. Satisfactory redundant and uninterruptible power and fiber infrastructure provisions; and
  - g. A copy of the Contractor's security review evidencing compliance with these requirements must be submitted to NYSED for review and approval within 6 months of the signing of the contract or before the first certification test is performed, whichever occurs first.

4. The Data must be returned to NYSED upon termination or expiration of this Agreement, or at such point that the Data are no longer needed for the purpose referenced in this Agreement, or, at the sole discretion of NYSED, securely destroyed. All hard copies of personally identifiable Data in the possession of the Contractor must be securely destroyed, and all electronic Data must be purged from the network in a manner that does not permit retrieval of the data. The contractor is specifically prohibited from commingling any data from outside sources into the Data received from NYSED, except as specifically authorized by NYSED.
5. If personally identifiable data of students, teachers or building principals will be disclosed to the Contractor by NYSED for purposes of the Contractor providing services to NYSED, the Contractor must comply with the following requirements of Education Law §2-d (Chapter 56, Subpart L of the Laws of 2014) and any implementing regulations:
  - a. Any officers or employees of the third party contractor and its assignees who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access;
  - b. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - c. not use the education records for any other purposes than those explicitly authorized in its contract;
  - d. except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any personally identifiable information to any other party:
    - (i) without the prior written consent of the parent or eligible student; or
    - (ii) unless required by statute or court order and the party provides a notice of the disclosure to the department, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
  - e. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody; and
  - f. use encryption technology consistent with Education Law §2-d and any implementing regulations.
6. If requested by NYSED to make any disclosure of aggregated data using the Data provided to or stored by the Contractor, Contractor must ensure that the disclosed aggregated data cannot reasonably be used to identify a particular individual. Aggregated data will be considered

identifiable if the disclosure has less than five (5) data elements per cell or the data elements per cell comprise 100% of the subject population.

7. Contractor agrees that all Data shall remain at all times the property of the State, and may not be used for any purpose other than the purpose outlined in this Agreement without the express written permission of NYSED. The Contractor has no ownership of or licensing rights to the Data except as provided in this Agreement, and Contractor specifically agrees that it will not sell, give or otherwise transfer the Data to any third party without NYSED's express prior approval.
8. The Contractor must ensure that these confidentiality and security provisions apply to any subcontractor engaged by the Contractor for the work under this agreement. The Contractor shall take full responsibility for the acts and omissions of its subcontractors, and the use of subcontractors shall not impair the rights of NYSED against the Contractor in accordance with this Agreement.
9. Hardware, software and services acquired by the Contractor under this Agreement may not be used for other activities beyond those described in the scope of the contract unless authorized in advance by NYSED.
10. Security of Location - Server room will remain a restricted access, locked room with access via security cards. The list of staff with access to the server room will continue to be reviewed quarterly against the number of times each staff actually gained access to the server room.
11. Breach Notification.
  - a. Contractor that receives student data or teacher or principal data pursuant to a contract or other written agreement with an educational agency shall be required to notify such educational agency of any breach of security resulting in an unauthorized release of such data in accordance with Education Law §2-d and any implementing regulations. Upon such notification, the educational agency shall take appropriate action in accordance with Education Law §2-d and any implementing regulations.
  - b. In the event that the State is required, pursuant to Education Law §2-d(6)(b), to notify one or more parent, eligible student, teacher or principal of an unauthorized release of student data by the Contractor or its assignee, the Contractor shall promptly reimburse the State for the full cost of such notification.
  - c. Contractor acknowledges that it may be subject to penalties under Education Law §§2-d(6) and 2-d(7) for unauthorized disclosure of personally identifiable student, teacher or principal data.
  - d. Contractor agrees that it will cooperate and promptly comply with any inquiries from the State based upon the State's receipt of a complaint or other information indicating that an improper or unauthorized disclosure of personally identifiable information may have occurred.

Contractor will permit on-site examination and inspection, and will provide at its own cost necessary documentation or testimony of any employee, representative or assignee of Contractor relating to the alleged improper disclosure of data.

---

\* **The Laws of New York State:** <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>: *Regulations for New York State Social Services* : Social Services Law §§ 136, 372, 390(3)(c)(iv), 409-f, 422, 444 and 460-e; 18 NYCRR Part 339, Part 357, § 414.15(a)(5), § 416.15(a)(7), § 417.15 (a)(7), § 418-1.15 (a) (5), § 418-2.15(a) (7), Part 445 and Part 466  
*New York State Personal Privacy Laws (PPPL)*: 21 NYCRR Chapter XXV and 19 NYCRR Part 81  
*SED-specific PPPL regulations*: 8 NYCRR Part 187

## **APPENDIX S - PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY**

To satisfy their responsibilities regarding the provision of education to students in pre-kindergarten through grade twelve, “educational agencies” (as defined below) in the State of New York collect and maintain certain personally identifiable information from the education records of their students. As part of the Common Core Implementation Reform Act, Education Law §2-d requires that each educational agency in the State of New York must develop a Parents’ Bill of Rights for Data Privacy and Security (Parents’ Bill of Rights). The Parents’ Bill of Rights must be published on the website of each educational agency, and must be included with every contract the educational agency enters into with a “third party contractor” (as defined below) where the third party contractor receives student data, or certain protected teacher/principal data related to Annual Professional Performance Reviews that is designated as confidential pursuant to Education Law §3012-c (“APPR data”).

The purpose of the Parents’ Bill of Rights is to inform parents (which also include legal guardians or persons in parental relation to a student, but generally not the parents of a student who is age eighteen or over) of the legal requirements regarding privacy, security and use of student data. In addition to the federal Family Educational Rights and Privacy Act (FERPA), Education Law §2-d provides important new protections for student data, and new remedies for breaches of the responsibility to maintain the security and confidentiality of such data.

### **A. What are the essential parents’ rights under the Family Educational Rights and Privacy Act (FERPA) relating to personally identifiable information in their child’s student records?**

The rights of parents under FERPA are summarized in the Model Notification of Rights prepared by the United States Department of Education for use by schools in providing annual notification of rights to parents. It can be accessed at <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>, and a copy is attached to this Parents’ Bill of Rights. Complete student records are maintained by schools and school districts, and not at the New York State Education Department (NYSED). Further, NYSED would need to establish and implement a means to verify a parent’s identity and right of access to records before processing a request for records to the school or school district. Therefore, requests to access student records will be most efficiently managed at the school or school district level.

Parents’ rights under FERPA include:

1. The right to inspect and review the student's education records within 45 days after the day the school or school district receives a request for access.
2. The right to request amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA. Complete student records are maintained by schools and school districts and not at NYSED, which is the secondary repository of data, and NYSED make amendments to school or school district records. Schools and school districts are in the best position to make corrections to students' education records.
3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent (including but not limited to disclosure under specified conditions to: (i) school officials within the school or school district with legitimate educational interests; (ii) officials of another school for purposes of enrollment or transfer; (iii) third party contractors providing services to, or performing functions for an educational agency; (iv) authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as NYSED; (v) organizations conducting studies for or on behalf of educational agencies) and (vi) the public where the school or school district has designated certain student data as "directory information" (described below). The attached FERPA Model Notification of Rights more fully describes the exceptions to the consent requirement under FERPA).
4. Where a school or school district has a policy of releasing "directory information" from student records, the parent has a right to refuse to let the school or school district designate any all of such information as directory information. Directory information, as defined in federal regulations, includes: the student's name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level, enrollment status, dates of attendance, participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received and the most recent educational agency or institution attended. Where disclosure without consent is otherwise authorized under FERPA, however, a parent's refusal to permit disclosure of directory information does not prevent disclosure pursuant to such separate authorization.

5. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA.

**B. What are parents' rights under the Personal Privacy Protection Law (PPPL), Article 6-A of the Public Officers Law relating to records held by State agencies?**

The PPPL (Public Officers Law §§91-99) applies to all records of State agencies and is not specific to student records or to parents. It does not apply to school districts or other local educational agencies. It imposes duties on State agencies to have procedures in place to protect from disclosure of "personal information," defined as information which because of a name, number, symbol, mark or other identifier, can be used to identify a "data subject" (in this case the student or the student's parent). Like FERPA, the PPPL confers a right on the data subject (student or the student's parent) to access to State agency records relating to them and requires State agencies to have procedures for correction or amendment of records.

A more detailed description of the PPPL is available from the Committee on Open Government of the New York Department of State. Guidance on what you should know about the PPPL can be accessed at <http://www.dos.ny.gov/coog/shldno1.html>. The Committee on Open Government's address is Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Avenue, suite 650, Albany, NY 12231, their email address is [coog@dos.ny.gov](mailto:coog@dos.ny.gov), and their telephone number is (518) 474-2518.

**C. Parents' Rights Under Education Law §2-d relating to Unauthorized Release of Personally Identifiable Information**

**1. What "educational agencies" are included in the requirements of Education Law §2-d?**

- The New York State Education Department ("NYSED");
- Each public school district;
- Each Board of Cooperative Educational Services or BOCES; and
- All schools that are:
  - a public elementary or secondary school;
  - a universal pre-kindergarten program authorized pursuant to Education Law §3602-e;
  - an approved provider of preschool special education services;

- any other publicly funded pre-kindergarten program;
- a school serving children in a special act school district as defined in Education Law 4001; or
- certain schools for the education of students with disabilities - an approved private school, a state-supported school subject to the provisions of Education Law Article 85, or a state-operated school subject to Education Law Article 87 or 88.

**2. What kind of student data is subject to the confidentiality and security requirements of Education Law §2-d?**

The law applies to personally identifiable information contained in student records of an educational agency listed above. The term “student” refers to any person attending or seeking to enroll in an educational agency, and the term “personally identifiable information” (“PII”) uses the definition provided in FERPA. Under FERPA, personally identifiable information or PII includes, but is not limited to:

- (a) The student’s name;
- (b) The name of the student’s parent or other family members;
- (c) The address of the student or student’s family;
- (d) A personal identifier, such as the student’s social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student’s date of birth, place of birth, and Mother’s Maiden Name<sup>9</sup>;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

**3. What kind of student data is *not* subject to the confidentiality and security requirements of Education Law §2-d?**

---

<sup>9</sup> Please note that NYSED does not collect certain information defined in FERPA, such as students’ social security numbers, biometric records, mother’s maiden name (unless used as the mother’s legal name).

The confidentiality and privacy provisions of Education Law §2-d and FERPA extend only to PII, and not to student data that is not personally identifiable. Therefore, de-identified data (e.g., data regarding students that uses random identifiers), aggregated data (e.g., data reported at the school district level) or anonymized data that could not be used to identify a particular student is not considered to be PII and is not within the purview of Education Law §2-d or within the scope of this Parents' Bill of Rights.

#### **4. What are my rights under Education Law § 2-d as a parent regarding my student's PII?**

Education Law §2-d ensures that, in addition to all of the protections and rights of parents under the federal FERPA law, certain rights will also be provided under the Education Law. These rights include, but are not limited to, the following elements:

- (A) A student's PII cannot be sold or released by the educational agency for any commercial or marketing purposes.
  - PII may be used for purposes of a contract that provides payment to a vendor for providing services to an educational agency as permitted by law.
  - However, sale of PII to a third party solely for commercial purposes or receipt of payment by an educational agency, or disclosure of PII that is not related to a service being provided to the educational agency, is strictly prohibited.
  
- (B) Parents have the right to inspect and review the complete contents of their child's education record including any student data stored or maintained by an educational agency.
  - This right of inspection is consistent with the requirements of FERPA. In addition to the right of inspection of the educational record, Education Law §2-d provides a specific right for parents to inspect or receive copies of any data in the student's educational record.
  - NYSED will develop policies for annual notification by educational agencies to parents regarding the right to request student data. Such policies will specify a reasonable time for the educational agency to comply with such requests.
  - The policies will also require security measures when providing student data to parents, to ensure that only authorized individuals receive such data. A parent may be asked for information or verifications

reasonably necessary to ensure that he or she is in fact the student's parent and is authorized to receive such information pursuant to law.

- (C) State and federal laws protect the confidentiality of PII, and safeguards associated with industry standards and best practices, including, but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.

Education Law §2-d also specifically provides certain limitations on the collection of data by educational agencies, including, but not limited to:

- (A) A mandate that, except as otherwise specifically authorized by law, NYSED shall only collect PII relating to an educational purpose;
- (B) NYSED may only require districts to submit PII, including data on disability status and student suspensions, where such release is required by law or otherwise authorized under FERPA and/or the New York State Personal Privacy Law; and
- (C) Except as required by law or in the case of educational enrollment data, school districts shall not report to NYSED student data regarding juvenile delinquency records, criminal records, medical and health records or student biometric information.
- (D) Parents may access the NYSED Student Data Elements List, a complete list of all student data elements collected by NYSED, at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>, or may obtain a copy of this list by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, NY 12234; and
- (E) Parents have the right to file complaints with an educational agency about possible breaches of student data by that educational agency's third party contractors or their employees, officers, or assignees, or with NYSED. Complaints to NYSED should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany NY 12234, email to [CPO@mail.nysed.gov](mailto:CPO@mail.nysed.gov). The complaint process is under development and will be established through regulations to be proposed by NYSED's Chief Privacy Officer, who has not yet been appointed.

- Specifically, the Commissioner of Education, after consultation with the Chief Privacy Officer, will promulgate regulations establishing procedures for the submission of complaints from parents, classroom teachers or building principals, or other staff of an educational agency, making allegations of improper disclosure of student data and/or teacher or principal APPR data by a third party contractor or its officers, employees or assignees.
- When appointed, the Chief Privacy Officer of NYSED will also provide a procedure within NYSED whereby parents, students, teachers, superintendents, school board members, principals, and other persons or entities may request information pertaining to student data or teacher or principal APPR data in a timely and efficient manner.

**5. Must additional elements be included in the Parents’ Bill of Rights.?**

Yes. For purposes of further ensuring confidentiality and security of student data, as an appendix to the Parents’ Bill of Rights each contract an educational agency enters into with a third party contractor shall include the following supplemental information:

- (A) the exclusive purposes for which the student data, or teacher or principal data, will be used;
- (B) how the third party contractor will ensure that the subcontractors, persons or entities that the third party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements;
- (C) when the agreement with the third party contractor expires and what happens to the student data or teacher or principal data upon expiration of the agreement;
- (D) if and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected; and
- (E) where the student data or teacher or principal data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
  - a. In addition, the Chief Privacy Officer, with input from parents and other education and expert stakeholders, is required to develop additional

elements of the Parents' Bill of Rights to be prescribed in Regulations of the Commissioner.

**6. What protections are required to be in place if an educational agency contracts with a third party contractor to provide services, and the contract requires the disclosure of PII to the third party contractor?**

Education Law §2-d provides very specific protections for contracts with “third party contractors”, defined as any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency. The term “third party contractor” also includes an educational partnership organization that receives student and/or teacher or principal APPR data from a school district to carry out its responsibilities pursuant to Education Law §211-e, and a not-for-profit corporation or other non-profit organization, which are not themselves covered by the definition of an “educational agency.”

Services of a third party contractor covered under Education Law §2-d include, but not limited to, data management or storage services, conducting studies for or on behalf of the educational agency, or audit or evaluation of publicly funded programs.

When an educational agency enters into a contract with a third party contractor, under which the third party contractor will receive student data, the contract or agreement must include a data security and privacy plan that outlines how all state, federal, and local data security and privacy contract requirements will be implemented over the life of the contract, consistent with the educational agency's policy on data security and privacy. However, the standards for an educational agency's policy on data security and privacy must be prescribed in Regulations of the Commissioner that have not yet been promulgated. A signed copy of the Parents' Bill of Rights must be included, as well as a requirement that any officers or employees of the third party contractor and its assignees who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access.

Each third party contractor that enters into a contract or other written agreement with an educational agency under which the third party contractor will receive student data or teacher or principal data shall:

- limit internal access to education records to those individuals that are determined to have legitimate educational interests
- not use the education records for any other purposes than those explicitly authorized in its contract;
- except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any PII to any other party (i) without the prior written consent of the parent or eligible student; or (ii) unless required by statute or court order and the party provides a notice of the disclosure to NYSED, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
- maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of PII in its custody; and
- use encryption technology to protect data while in motion or in its custody from unauthorized disclosure.

## **7. What steps can and must be taken in the event of a breach of confidentiality or security?**

Upon receipt of a complaint or other information indicating that a third party contractor may have improperly disclosed student data, or teacher or principal APPR data, NYSED's Chief Privacy Officer is authorized to investigate, visit, examine and inspect the third party contractor's facilities and records and obtain documentation from, or require the testimony of, any party relating to the alleged improper disclosure of student data or teacher or principal APPR data.

Where there is a breach and unauthorized release of PII by a third party contractor or its assignees (e.g., a subcontractor): (i) the third party contractor must notify the educational agency of the breach in the most expedient way possible and without unreasonable delay; (ii) the educational agency must notify the parent in the most expedient way possible and without unreasonable delay; and (iii) the third party contractor may be subject to certain penalties including, but not limited to, a monetary fine; mandatory training regarding federal and state law governing the confidentiality of student data, or teacher or principal APPR data; and preclusion from accessing any student data, or teacher or principal APPR data, from an educational agency for a fixed period up to five years.

## **8. Data Security and Privacy Standards**

Upon appointment, NYSED's Chief Privacy Officer will be required to develop, with input from experts, standards for educational agency data security and privacy policies. The Commissioner will then promulgate regulations implementing these data security and privacy standards.

## **9. No Private Right of Action**

Please note that Education Law §2-d explicitly states that it does not create a private right of action against NYSED or any other educational agency, such as a school, school district or BOCES.

## ATTACHMENT

### Model Notification of Rights under FERPA for Elementary and Secondary Schools

The Family Educational Rights and Privacy Act (FERPA) affords parents and students who are 18 years of age or older ("eligible students") certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student's education records within 45 days after the day the [Name of school ("School")] receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the records they wish to inspect. The school official will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.

Parents or eligible students who wish to ask the [School] to amend a record should write the school principal [or appropriate school official], clearly identify the part of the record they want changed, and specify why it should be changed. If the school decides not to amend the record as requested by the parent or eligible student, the school will notify the parent or eligible student of the decision and of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel) or a person serving on the school board. A school official also may include a volunteer or contractor outside of the school who performs an institutional service or function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor,

medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the school discloses education records without consent to officials of another school district in which a student seeks or intends to enroll, or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer. [NOTE: FERPA requires a school district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward records on request.]

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the [School] to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

[NOTE: In addition, a school may want to include its directory information public notice, as required by §99.37 of the regulations, with its annual notification of rights under FERPA.]

[Optional] See the list below of the disclosures that elementary and secondary schools may make without consent.

FERPA permits the disclosure of PII from students' education records, without consent of the parent or eligible student, if the disclosure meets certain conditions found in §99.31 of the FERPA regulations. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible student, §99.32 of the FERPA regulations requires the school to record the disclosure. Parents and eligible students have a right to inspect and review the record of disclosures. A school may disclose PII from the education records of a student without obtaining prior written consent of the parents or the eligible student

- To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests.

This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in §99.31(a)(1)(i)(B)(1) - (a)(1)(i)(B)(2) are met. (§99.31(a)(1))

- To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of §99.34. (§99.31(a)(2))
- To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency in the parent or eligible student's State (SEA). Disclosures under this provision may be made, subject to the requirements of §99.35, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf. (§§99.31(a)(3) and 99.35)
- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§99.31(a)(4))
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to §99.38. (§99.31(a)(5))
- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. (§99.31(a)(6))
- To accrediting organizations to carry out their accrediting functions. (§99.31(a)(7))
- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena. (§99.31(a)(9))
- To appropriate officials in connection with a health or safety emergency, subject to §99.36. (§99.31(a)(10))
- Information the school has designated as "directory information" under §99.37. (§99.31(a)(11))

## APPENDIX S-1 Attachment To Parents' Bill Of Rights For Contracts Involving Disclosure of Certain Personally Identifiable Information

Education Law §2-d, added by Ch. 56 of the Laws of 2014, requires that a Parents' Bill of Rights be attached to every contract with a third-party contractor (as defined in the law) which involves the disclosure of personally identifiable information (PII) derived from student education records ("Student Data"), or certain teacher/principal information regarding annual professional performance evaluations that is confidential pursuant to Education Law §30212-c ("APPR Data"). Each such Contract must include this completed Attachment to provide specific information about the use of such data by the Contractor.

1. Specify whether this Contract involves disclosure to the Contractor of Student Data, APPR Data, or both.

Disclosure of Student Data

Disclosure of APPR Data

2. Describe the exclusive purposes for which the Student Data or APPR Data will be used in the performance of this contract.

***The purpose of this contract is to produce state-provided growth scores (using student test score data and educator information) for APPR purposes. No additional APPR data is provided to the contractor beyond the state-provided growth scores they produce.***

3. Identify any subcontractors or other persons/entities with whom the Contractor will share the Student Data or APPR in the performance of this Contract, and describe how the Contractor will ensure that such persons/entities will abide by the data protection and security requirements of the Contract.

Subcontractors or other entities with whom the Contractor will share data:

***Bidder should specifically list in this section any/all subcontractors that will/may receive data.***

***In the event the Contractor engages a Subcontractor or otherwise shares Student Data or APPR Data with any other entity, Contractor acknowledges and agrees that before any such data is shared with a Contractor or another entity, such party must agree in writing to be bound by the confidentiality and data protection provisions set forth in this Contract including, but not limited to, the "Data Security and Privacy Plan" set forth in Appendix R. Upon termination of the agreement between the***

**Contractor and a Subcontractor or other entity, Contractor acknowledges and agrees that it is responsible for ensuring that all Student Data or APPR Data shared by the Contractor must be returned to Contractor or otherwise destroyed as provided in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix R.**

4. Specify the expiration date of the Contract, and explain what will happen to the Student Data or APPR Data in the Contractor’s possession, or the possession of any person/entity described in response to Paragraph 3, upon the expiration or earlier termination of the Contract.

Contract expiration date: **December 31, 2021**

- Contractor agrees to return the Student Data or APPR Data to NYSED consistent with the protocols set forth in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix R.
- Contractor agree to securely destroy the Student Data or APPR Data consistent with the protocols set forth in Paragraph 4 of the “Data Security and Privacy Plan” set forth in Appendix R.

5. State whether the Contractor will be collecting any data from or pertaining to students derived from the student’s education record, or pertaining to teachers or principals’ annual professional performance evaluation pursuant to the Contract, and explain if and how a parent, student, eligible student (a student eighteen years or older), teacher or principal may challenge the accuracy of the Student Data or APPR data that is collected.

- Student Data  
 APPR Data

**Any challenges to the accuracy of any of the Student Data or APPR Data shared pursuant to this Contract should be addressed to the school, educational agency or entity which produced, generated or otherwise created such data.**

6. Describe where the Student Data or APPR Data will be stored (in a manner that does not jeopardize data security), and the security protections taken to ensure that the data will be protected, including whether such data will be encrypted.

***Bidder should detail in this section where data will be stored, what security measures will be in place, and whether electronic data is encrypted in motion and/or at rest.***