

**REQUEST FOR PROPOSAL (RFP)  
#17-014**

**NEW YORK STATE EDUCATION DEPARTMENT**

**Title: Transcribing New York State Exams and Related Materials into Braille**

The New York State Education Department (NYSED) Office of State Assessment (OSA) is seeking proposals for the transcribing of New York State Exams and exam-related materials into braille. This request pertains to secure State-developed and State-approved exams including Regents Exams, and elementary- and intermediate-level science tests, as well as science reference tables, scoring materials, reports of exam results, and mathematics tables.

In the course of the contract resulting from this RFP, no personally identifiable information will be provided to the contractor because none is necessary in order for the contractor to perform the services detailed in this RFP.

Eligible bidders may be either for-profit or not-for-profit entities, including large testing companies, consultants and/or educational organizations. Eligible bidders should have demonstrated professional experience in literary and mathematic Braille transcription, preparation of transcript text and graphics for illustrations, and mass-production or print-on-demand production and mass-production.

Subcontracting will **not** be allowed for this contract. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. NYSED has not established Minority and Women-owned Business Enterprise (MWBE) goals for this procurement.

NYSED will award **one (1)** contract pursuant to this RFP. The contract resulting from this RFP will be in effect for a term of five (5) years, anticipated to begin **September 1, 2017** and to end **August 31, 2022**.

**Components contained in RFP Proposal #17-014 are as follows:**

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

Questions regarding this RFP must be submitted by email to [AssessmentRFP@nysed.gov](mailto:AssessmentRFP@nysed.gov) no later than the close of business on March 31<sup>st</sup>, 2017. Questions submitted should be identified as Program or Fiscal. A Questions and Answers Summary will be posted by April 7<sup>th</sup>, 2017 to [NYSED's Competitive Procurement Contract webpage](#). In compliance with the Procurement Lobbying Law, the following are the designated contacts for this procurement:

**Program Matters**  
**Christine Brady**

**Fiscal Matters**  
**Nell Brady**

Email: [AssessmentRFP@nysed.gov](mailto:AssessmentRFP@nysed.gov)

## RFP #17-014

The Bidder must submit the following separately sealed packages, with contents as detailed in the *Submission* section of this RFP, and be received by NYSED no later than **3:00 PM, Eastern Time (ET) on April 21<sup>st</sup>, 2017:**

Package A—Submission Documents labeled, **Submission Documents - RFP #17-014 Do Not Open**

Package B—Technical Proposal labeled, **Technical Proposal - RFP #17-014 Do Not Open**

**Each vendor submitting a proposal for this RFP, should submit with Package B—Technical Proposal, sample test pages, found in §5. Attachments (1 page each of Earth Science, Global History and Geography, and Mathematics) transcribed by the Bidder into two Braille formats, under the rules of English Braille American Edition (EBAE) and Unified English Braille (UEB). For additional details see §2. *Submission* and §3. *Evaluation Criteria and Method of Award*.**

Package C—Cost Proposal labeled, **Cost Proposal – RFP #17-014 Do Not Open**

Package D—2 CD-ROMs, labeled **CD-ROM-RFP#17-014- Do Not Open**

The mailing address for all the above documentation is:

NYS Education Department  
Bureau of Fiscal Management  
Attn: Nell Brady, RFP#17-014  
Contract Administration Unit  
89 Washington Avenue, Room 501W EB  
Albany, NY 12234

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

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**Glossary of Terms and Acronyms used in this RFP**

<b>Term or Acronym</b>	<b>Definition</b>
§	Section
administration period	The scheduled/prescribed time in which a State exam, test or assessment is given to students at authorized testing locations established via a published schedule, which includes the required date(s) of testing and may include a start and end time
assessment	An exam (test) designed to measure a student's knowledge and understanding of content, concepts, and/or skills
BANA	Braille Authority of North America - assures literacy for tactile readers through standardization of braille and tactile graphics
braille	a system of writing and printing for blind or visually impaired people, in which varied arrangements of raised dots representing letters and numerals are identified by touch
braille code	the characters of a writing system mapped to the six or eight, raised dots of a braille cell
braille embosser	a hardware device that reproduces a braille hard copy of a text document and/or tactile graphic
braille reproduction	a copy and/or subsequent copies ordered of a final NYSED approved braille transcription of an exam or exam-related material
braille transcriber	a person who transcribes (manually presses keys to produce braille) or translates (uses a program to produce braille) print text into braille
CNIB	Canadian National Institute for the Blind
EBAE	English Braille American Edition - braille code used for literary material
fold-out diagram	a folded insert or section whose full size exceeds that of the regular page
grade II braille (contracted braille)	braille, consisting of letters, numbers, punctuation marks, composition signs and 189 contractions and short-form words
graphic	a diagram or image used for illustration
interpoint braille	braille that is embossed on both sides of the same braille page
mass production	term to categorize vendors that transcribe and reproduce large numbers of similar Braille products for longer runs
Nemeth Braille Code for Mathematics and Science Notation	the braille code used to transcribe mathematics and science notation
NLS	National Library Service for the Blind and Physically Handicapped, Library of Congress
NUBS	Nemeth Uniform Braille System - represents literary, math and computer information
NYSED	The New York State Department of Education
NYS Vendor ID	shall refer to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File

print-on-demand	term used to categorize vendors that transcribe and reproduce only exact quantities needed for immediate distribution based on actual demand.
professional transcribers	a person who obtains certification through the NLS or CNIB
proofreader	a person, certified by NLS or CNIB, who reads braille by touch and/or sight
raised-line tactile graphics	any tangible component of a tactile diagram and may consist of linear, areal, or simple point symbols
Subcontractor	Any firm engaged or assigned by the Contractor to perform work under the Contract, or any person so engaged or assigned who is not an employee of the Contractor
tactile graphic	raised version of a print graphic that is adapted for the sense of touch
thermographic ink	granulated ink used to produce a raised-line tactile graphic design
thermography	a printing process for producing raised lettering by application of a powder that is fused by heat to the fresh ink
UEB	Unified English Braille - code to represent literary, math, and computer information
uncontracted braille	braille in which every word is spelled out letter for letter (also called Grade 1 Braille)

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

1. "Mandatory"	Denotes the imperative in a Contract clause or specification. Means required - being determinative/obligatory, as well as imperative. Also see "Must" and "Shall".
1. "May"	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should".
2. "Must"	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see "Shall" and "Mandatory".
3. "Shall"	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see "Must" and "Mandatory".
4. "Should"	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "May".

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## 1. Description of Services to be Performed

### 1.1 Work Statement and Specifications

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

### 1.2 (This section not in use)

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

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

### 1.4 Key Events

The table below outlines the schedule for important events for this RFP.

Event	Date
Deadline for Submission of Bidder Questions	March 31 <sup>st</sup> , 2017
NYSED Issues Responses to Written Questions (estimated)	April 7 <sup>th</sup> 2017
Bid Due Date / Bid Opening Date	April 21 <sup>st</sup> , 2017
Contract Start Date	Upon OSC Approval

## 1.5 Background

NYSED is currently providing literary braille transcriptions under the rules of EBAE and mathematic transcriptions under the rules of Nemeth Code for Mathematics and Scientific Notation. However, during the term of the contract awarded from this RFP, it is anticipated NYSED will transition to the use of Unified English Braille (UEB) for literary braille transcriptions while continuing to provide mathematics braille transcriptions under the rules of Nemeth Code. During the period of transition, NYSED will require the contractor to provide transcriptions of some State exams in English Braille American Edition (EBAE) and others in UEB or to provide the same State exams in both Braille formats.

## 1.6 Deliverables and/or Project Description

It is anticipated that the NYSED transition to student use of UEB for literary braille transcriptions for State assessments will begin in the 2019-20 school year and will extend for several school years. The offices of Special Education and State Assessment have created a transition timeline for both the elementary- and intermediate-level State assessments and Regents Examinations as found in Attachment D. During this transition period the contractor will be instructed by NYSED to transcribe some State exams and related materials into UEB and other State exams into EBAE, and in some cases, be instructed to transcribe the same State exam form and related material into both UEB and EBAE formats.

The contractor must provide to NYSED error free braille transcriptions from regular English print and braille reproductions for all exams and related materials in the content areas of English language arts, mathematics, science, and social studies. NYSED will be charged at the *price per page* rates as specified in §1.18 *Payments and Reports* and in accordance with §1.19 *Liquidated Damages*, for transcriptions from regular English print and per Braille page reproduced of the documents. Braille transcription of related materials may include an occasional scoring key or rating guide, in addition to any exam reference tables that are updated periodically. NYSED currently requires braille transcribing to result in a paper braille document.

Braille transcriptions and reproductions must be completed and delivered to NYSED in accordance with the timeline specified in §1.8. Tests and related materials may be added or removed by NYSED throughout the contract period. The chart below called “Braille Transcriptions Completed for the 2015-16 School Year” lists the approximate number of pages of regular English print that was required to be transcribed and reproduced in Braille for the months of administration in the 2015-16 school year. Months of administration may vary and the contractor, if asked, must provide tests and related materials or additional copies of exams outside of the time periods listed in the chart below called “Braille Transcriptions Completed for the 2015-16 School Year.”

Past editions of secondary-level Regents Exams and Elementary- and Intermediate-Level Science Tests and related materials are available on the NYSED web site at: <http://www.nysedregents.org>.



<b>Braille Transcriptions Completed for the 2015-16 School Year</b>			
<b>Content Area/ Exam Title/Related Material</b>	<b>Number of Pages in English Print Edition for the Month of Exam Administration</b>		
	<b>January</b>	<b>May/June</b>	<b>August</b>
<b>Regents English Language Arts</b>			
English Language Arts (Common Core)	24	24	24
Comprehensive English (2005 Learning Standards)	16	16	0
<b>Regents Mathematics</b>			
Algebra I (Common Core)	24	28	24
Algebra II (Common Core)	28	28	28
Geometry (2005 Standard)	28	28	0
Geometry (Common Core)	32	28	28
Algebra 2/Trigonometry	28	28	24
Special Administration Integrated Algebra	24	24	0
<b>Regents Science</b>			
Physical Setting/Chemistry	16	16	16
<b>Elementary- and Intermediate- Science</b>			
Grade 4 Elementary-Level Science Written Test	0	28	0
Grade 8 Intermediate-Level Science Written Test	0	32	0
<b>Regents Social Studies</b>			
Global History & Geography	28	24	28
United States History & Government	32	28	28

<b>Estimate of Existing Braille Transcriptions NYSED Requested to be Reproduced During an Average School Year</b>		
<b>Content Area/ Exam Title/Related Material</b>	<b>Approximate Number of Braille Reproductions</b>	<b>Approximate Number of Braille Pages in Each Copy</b>
<b>Science</b>		
Restricted Regents Physical Setting/Earth Science	30	105-140
Restricted Regents Physical Setting/Physics	30	92
Restricted Regents Living Environment	30	66-114
Earth Science Performance Test	60	64
Earth Science Reference Tables	60	195
Physical Setting/Physics Reference Tables	60	41
Grade 4 Elementary-Level Science Performance Test	60	56
Grade 8 Intermediate-Level Science Performance Test	60	64

### 1.7 NYSED Specifications and Requirements for Transcribing Braille

1. The individual(s) providing literary braille transcriptions under this contract should be certified by the National Library Service for the Blind and Physically Handicapped, Library of Congress (NLS) in literary braille transcribing, under the rules of Unified English Braille (UEB).
2. The contractor is required to provide both EBAE and UEB for literary braille transcriptions and mathematic transcriptions under the rules of Nemeth Code for Mathematics and Scientific Notation, as requested by NYSED, during NYSED's anticipated transition from EBAE to UEB most likely beginning with the 2018-19 school year.
3. The individual(s) providing mathematics braille transcriptions under this contract should be certified by NLS in mathematics braille transcribing, under the rules of Nemeth Code for Mathematics and Scientific Notation, with at least a general certification in UEB.
4. The contractor must provide literary, science, math, and tactile, adhering to all current braille codes, guidelines and standards provided by the Braille Authority of North America (BANA) for all countries using English Braille.
5. All materials will be transcribed into grade II (contracted) braille, unless otherwise specified by NYSED.
6. Original transcriptions must be checked thoroughly and proofread by a reviewer and discrepancies resolved before submission to NYSED. NYSED prefers that the literary reviewer is certified by NLS in literary braille proofreading under the rules of UEB. NYSED also prefers that the mathematics reviewer is certified by NLS in mathematics braille proofreading under the rules of Nemeth Code for Mathematics and Scientific Notation with at least a general certification in UEB.
7. Tests and related materials must be transcribed into braille text and raised-line graphics for illustrations in their entirety, including all labeled items on tactile graphics (map, graph, diagram, chart, table, etc.).
8. The exclusion and/or prorating of items from the braille edition of these tests and related material are prohibited. The contractor must obtain NYSED's prior approval to change, modify, or eliminate information contained in the printed original copy.
9. If the contractor is using inter-point braille embossing (braille on both sides of the paper), the contractor must use paper that will prevent the braille from bleeding through, allowing for maximum embossing quality.
10. A thermographic printing process, using granulated ink, is the required method for producing raised-line tactile graphics.
11. If a tactile graphic does not fit within the constraints of a standard braille page (11 inches by 11.5 inches), then foldouts must be used.

12. If a tactile graphic has information that cannot fit within the constraints of the BANA codes for tactile graphics, the contractor must obtain NYSED's prior approval to change, modify, or eliminate information contained in the printed original copy.
13. Any suggestions for adapting items to make them more accessible and able to be transcribed into braille more efficiently should be discussed with and approved by NYSED prior to beginning transcription.
14. The contractor must adhere to the Security Guidelines for the New York State Assessment Program (see §6, Attachment A) for handling the transfer of secure documents for transcription. Test materials (regular English printed copies, pdf files, initial and final braille transcriptions, and reproductions) must be shipped in NYSED-provided locked boxes via UPS Next Day Air. (See § 1.11 Shipping/Receipt of Product below.)
15. The contractor must maintain computer files for embossing.
16. Ensure electronic and hard copy master files of braille transcribed documents are retained for various reasons including, but not limited to, the need to produce duplicate orders or replace items. These files must be maintained for the life of the contract and the vendor must be prepared to transfer files to NYSED at the end of the contract period. (See also, Appendix A, §10. Records)
17. Make all corrections to braille transcriptions after NYSED review. No additional payment will be made for pages that must be re-transcribed due to errors made by the vendor.

### **1.8 Time Line for Required Services**

Work by the contractor on a given exam must begin approximately two to three months prior to the exam's administration period. (See the chart "Braille Transcriptions Completed for the 2015-16 School Year" in §1.6.) NYSED will make all exam forms available to the contractor as soon as they are fully developed. The contractor must complete and deliver to NYSED the initial transcription of the regular English print of an exam within two (2) weeks from its receipt of the exam from NYSED. NYSED will review the initial transcription and send any required changes back to the contractor, generally within one week. The contractor will then have two (2) additional weeks to do all of the following: complete the final edition, submit to NYSED for approval, reproduce the requested number of braille copies, and ship to NYSED Next Day Air. For other on demand / related exam materials, the contractor will work with NYSED to develop a reasonable timeline for completion of work.

The first exams to be transcribed under this contract will be the January 2018 Regents Exams and the work for these exams will commence in October 2017.

### **1.9 Staffing Plan**

The contractor must ensure that staffing is commensurate with the project's scope of work throughout the duration of the contract and promptly notify NYSED of changes in key staffing assigned to this project.

### **1.10 Program Manager and Responsibilities**

The contractor must identify a program manager to be the central point of contact with NYSED for the duration of this contract. The contractor is expected to demonstrate that the individual identified as a program manager has sufficient authority and experience across departments within the organization to ensure that the work of the contract has the necessary priority to be completed with the highest quality and on time.

It is preferred that the Program Manager possesses the following: a minimum of a Bachelor's degree; a project management certification through the Project Management Institute (PMI) as a Project Management Professional (PMP), or other recognized program management certification (evidence of the certification should be included). The program manager should have at least three years' experience managing large-scale assessment projects from conception through completion, following industry-recognized project-management methodology. Previous experience in projects involving large-scale assessment including high school equivalency, or elementary-, intermediate-, and/or secondary-level testing is expected. The program manager is expected to have strong organizational and managerial skills and a demonstrated knowledge of testing procedures. The program manager responsibilities will include, but are not limited to, the following:

1. Travel to Albany to meet with NYSED staff at the start of the contract period. An introductory meeting of one full day or as otherwise mutually agreed upon shall be held in Albany within thirty days of final contract approval. After that initial introductory meeting, the vendor may be called upon to travel to Albany up to at least one time per year throughout the duration of the contract.
2. Coordinate and participate in conference calls and communicate via e-mail with NYSED staff assigned to this project to discuss the status of the work on the contract and any issues related thereto on an as-needed basis.
3. Maintain accurate, up-to-date information on the current status of all work on the project and communicate such to NYSED staff upon request and in a timely manner.
4. Submit all deliverables and other work products to NYSED in the manner designated by NYSED for review and approval. Materials must be submitted to NYSED in accordance with the timeline specified in this RFP. (See §1.8 Time Line for Required Services)
5. In the event that a problem or potential problem arises with regard to the quality, timeliness, or any other issue with respect to deliverables and services at any time during the contract term, regardless of when the problem arises, the program manager must immediately notify NYSED via phone and e-mail of the issue and shall also immediately propose a solution for the problem or potential problem.
6. The program manager must cooperate fully with designated NYSED staff to perform all activities. The contractor must notify NYSED promptly if there is a need to replace the designated program manager. Such replacement is subject to approval by NYSED.

## **1.11 Shipping/Receipt of Product**

### **1. Packaging**

Product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled NYSED Lock boxes and according to accepted commercial practice without any extra charges for packing materials, cases, or other types of containers. The container(s) shall be and remain the property of NYSED.

### **2. Shipping Charges**

All deliveries shall be deemed to be freight on board (F.O.B.). Destination prepaid and added, via United Parcel Service (UPS) Next Day Air, delivery to NYSED. The Contractor shall pay shipping costs and separately invoice it to NYSED. The Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

### **3. Receipt of Product**

The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of NYSED. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

## **1.12 Title and Risk of Loss**

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to NYSED until the Products have been received, inspected, and accepted by NYSED as the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by NYSED personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by NYSED.

## **1.13 Security**

The contractor must provide security procedures for this contract in accordance with the protocols set forth in this RFP and Attachment A: Security Guidelines for the New York State Assessment Program. The security plan must specifically address where the activities described in this RFP will occur and how test materials will remain secure at all times, including secure shipment and/or encryption and secure transmission of all test materials.

The contractor 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 contractor 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 any secure test materials is not permitted unless authorized by NYSED to do so on a case-by-case basis. All shipments between the contractor and NYSED must be in NYSED-provided locked boxes, via UPS Next Day Air.

All contractor staff having access to secure or confidential information, including but not limited to test questions and scoring materials, shall sign a Non-Disclosure Agreement (see §6.

*Attachment B*) prior to the initiation of work under this contract and in accordance with Attachment A: Security Guidelines for the New York State Assessment Program.

### **1.14 Qualifications**

The contractor must complete the project through the use of its own hardware and software.

### **1.15 Ownership**

1. All braille transcriptions of exams (both print and computer file formats) and related materials shall be the exclusive property of NYSED.
2. NYSED is the sole owner of outputs resulting from the work proposed in the RFP, including, but not limited to, brailled operational examinations generated under this contract. The contractor shall be prepared to deliver all or part of the items to NYSED, as requested, at any point during the duration of this contract. Materials can be used by the contractor or other parties only with the express written permission of NYSED.
3. All such outputs are to be turned over to NYSED in print and electronic form, as specified by NYSED.

### **1.16 Terms and Conditions**

1. All deliverables must be submitted within the timelines specified by NYSED in the RFP.
2. All materials submitted to NYSED pursuant to this contract are required to be original materials developed solely by the bidder for use in satisfaction of this contract.
3. All materials written or revised are to be held strictly confidential and must not be copied, duplicated, disseminated, or discussed unless authorized by NYSED.

### **1.17 Contract Transition**

Upon completion or termination of the contract awarded as a result of this RFP, the contractor will use its best efforts to assist NYSED in completing a seamless transition to any successive contractor and/or NYSED. This shall include, but not be limited to, assisting NYSED in developing and implementing a feasible transition plan within thirty (30) days of the expiration or within thirty (30) days of notice of cancellation or termination of the contract.

The contractor agrees to cooperate fully with any successive contractor and NYSED, and refrain from any activity that would interfere with the successful implementation of the transition plan and a seamless transition. The contractor shall provide (a) all items, materials, data, and equipment owned by NYSED in the contractor's possession, and (b) any information reasonably useful to or requested by NYSED in developing a RFP for a successive contractor, prior to the expiration, cancellation, or termination of the contract.

The contractor will work with NYSED to determine the format for providing data and information that will optimize the reuse of this data and information by any successive contractor. The contractor will also provide NYSED with a list of computer programs and software tools necessary to allow an end user to read and export any data provided by the contractor under this contract.

### **1.18 Payments and Reports**

NYSED will pay the contractor quarterly for the actual number of pages of regular English print transcribed into Braille and for the actual number of Braille pages reproduced, using the prices per page specified in the (Appendix B) Bid Form Cost Proposal (see § 5. *Submission Documents*). The vendor will be paid per Braille page transcribed and reproduced, not per English print page. The prices per page must include all costs, with the exception of shipping, which will be F.O.B Destination freight prepaid and added. NYSED will reimburse to the contractor the actual cost to the contractor for shipping materials to NYSED, as evidenced by the contractor-submitted shipping invoices.

Payment to the contractor will be made only in accordance with properly submitted invoices. All invoices submitted for payment must include dates of services as well as an itemized list of activities, which must correspond to Appendix B contained in the executed contract. Invoices must reflect only the deliverables that have been completed and submitted to NYSED. Quarterly payments will be made based upon receipt and approval of deliverables by NYSED in accordance with Appendix C.

### **1.19 Liquidated Damages**

NYSED has specific standards for its exams, and expects that all braille transcriptions provided by the vendor will be completely free of errors. If one or more errors are found in the braille transcription(s) provided by the vendor that requires NYSED to notify schools of an adjustment in what constitutes an acceptable student response for an exam question, or requires the elimination of an exam question from consideration in scoring, NYSED will reduce by twenty-five percent (25%) the agreed-upon remuneration to the vendor for the braille transcription and reproduction of that exam form. If the vendor has already received payment for the exam form that contained the error, the deduction will be taken from the next invoice submitted.

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

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

### **1.21 Subcontracting Limit**

Subcontracting will not be allowed for this contract.

## 1.22 Consultant Staff Changes

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

## 1.23 Contract Period

NYSED will award **one (1)** contract pursuant to this RFP. The contract(s) resulting from this RFP will be for a term of five years anticipated to begin **September 1, 2017** and to end **August 31, 2022**.

## 1.24 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](#).

## **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.

NYSED has enacted its policies regarding 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 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.

4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section<sup>1</sup>. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).

5. Certified businesses (as defined under Article 15-A, §310.1 means a business verified as a minority or women-owned business enterprise pursuant to §314 of the Article) shall be given the opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share<sup>2</sup> of this contract to such businesses<sup>2</sup>.

6. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the [Empire State Development \(“ESD”\) directory of certified businesses](#). The contractor must

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

<sup>2</sup> Should the contractor identify a firm that is not currently certified as an M/WBE, it should request that the firm submit a certification application to [Empire State Development](#) 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.

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 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, within the period of time specified, 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](#).

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:

a. fully comply with the participation goals specified in the RFP; OR

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

c. do not include certified M/WBE subcontractors or suppliers, 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 [New York State Contract System website](#).

**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.**

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## **2. Submission**

### **2.1 Documents to be Submitted with this Proposal**

This section details the submission document or documents that are expected to be transmitted by the respondent to 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. The submission will become the basis on which NYSED will judge the respondent's ability to perform the required services as laid out in the RFP. This will be followed by various terms and conditions that reflect the specific needs of this project.

**In case of discrepancies between hardcopy and electronic Proposals, the original signed hardcopy shall take precedence.**

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 which are to be determined only after the award of a contract. No optional deliverables to be provided only at an additional cost should be included and will not be considered in the evaluation of the technical proposal. Contractual terms, conditions, and assumptions are inappropriate for inclusion in the proposal.

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

**The proposal must be received by NYSED in Albany, New York no later than the due date and time indicated in the *Key Events* section of this RFP.**

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### 2.2 Packaging

**Each Proposal submitted in response to this RFP should be packaged, sealed and submitted as follows:**

<b>Package</b>	<b>Labeling</b>	<b>Number of Copies</b>
Package A—Submission Documents	Submission Documents - RFP #17-014 Do Not Open	Three (3) (one signed original plus 2 copies)
Package B—Technical Proposal (includes transcribed sample test pages)	Technical Proposal - RFP #17-014 Do Not Open	Seven (7) (one signed original plus 6 copies). One (1) copy of each of three (3) sample test pages transcribed into two braille formats: EBAE and UEB.
Package C—Cost Proposal	Cost Proposal – RFP #17-014 Do Not Open	Three (3) (one signed original plus 2 copies)
Package D—CD-ROM is to include: Package A, B (excluding transcribed sample test pages) C and D in separate unprotected files in Microsoft Office products (Word & Excel)	CD-ROM- RFP #17-014 Do Not Open.	Two (2) CD-ROMs

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**2.3 Technical Proposal (Package B)**

**(70 points)**

The signed original plus **six (6)** copies of the completed Technical Proposal must be mailed in a separate envelope labeled **Technical Proposal-RFP #17-014 Do Not Open** and should include the following:

- Cover page
- Table of Contents
- Technical proposal, as outlined below
- Transcribed Test Sample pages; and
- Request for Exemption from Disclosure Pursuant to the Freedom of Information Law (found in § 5, *Submission Documents*)

The criteria that will be evaluated in determining the award and relative points are listed below:

**1. Quality of Bidder's Experience in Successful Braille Transcription (10 points)**

*Refer to § 1. Description of Services to be performed*

The bidder should provide satisfactory evidence of its capability to manage and coordinate the types of activities described in the RFP and to produce the specified project and services according to schedule. To substantiate the bidder's qualifications and ability to accomplish the described tasks, the bidder should include in this section the following information:

- Evidence and indications of the ability to perform tasks as described in *1. Description of Services to be performed*, including experience gained and products produced through work on similar projects;
- A minimum of three (3) current and accurate professional letters of reference that include the names, titles, organization names, addresses, telephone numbers and email addresses of the references. Do not use NYSED or Regents Research Foundation staff as references.
- Demonstrate experience working with large-scale assessment programs or another comparable program. It is preferred that the bidder provides documentation for a minimum of three (3) years' experience working with large-scale assessment programs.

**2. Appropriateness of Work Plan**

**(15 points)**

*Refer to §1.6 Deliverables and/or Project Description, §1.7 NYSED Specifications and Requirements for Transcribing Braille, and §1.8 Time Line for Required Services*

The bidder should describe as clearly, specifically, and completely as possible the plan for carrying out the requirements of the RFP as described in *§1.6 Deliverables and/or Project Description, §1.7 NYSED Specifications and Requirements for Transcribing Braille, and §1.8 Time Line for Required Services.*

- For a bidder to be successful, the proposal should communicate an understanding that demonstrates the bidder's capacity to complete all required services for both EBAE and UEB for literary braille transcriptions and mathematics transcriptions under the rules of Nemeth Code.
- The proposal should describe the services to be performed during the contract period, relating them to the stated purposes and specifications described in the RFP. Subsections should be clearly headed and indexed. Timelines showing the beginning and ending times for all activities are to be included.
- The proposal should describe the technical approaches to be used in developing braille transcriptions from regular English print and braille reproductions for exams and exam-related materials (such as: scoring keys, rating guides, and reference tables) in the content areas of: English language arts, Mathematics, Science, and Social studies.

**3. Quality and Appropriateness of Proposed Staffing**

**(15 points)**

*Refer to §1.7 NYSED Specifications and Requirements for Transcribing Braille, §1.9 Staffing Plan, and §1.10 Program Manager and Responsibilities*

- The proposal should include an organizational diagram that illustrates how project staffing and organizational arrangements are commensurate with the project's scope of work as described in *§1.7 NYSED Specifications and Requirements for Transcribing Braille, §1.9 Staffing Plan, and §1.10 Program Manager and Responsibilities.* The organizational diagram should include titles and descriptions of all proposed staff, their responsibilities, and the percent of each of these individual's total time to be allocated to the project.
- Successful proposals should include the program manager's current resume that demonstrates experience and expertise that are congruent with all aspects of the Program Manager Responsibilities. (Refer to *§1.10 Program Manager and Responsibilities.*)
- The program manager should have a bachelor's degree; a master's degree or above is preferred. Project management certification through the Project Management Institute (PMI) as a Project Management Professional (PMP), or other recognized program management certification is preferred. If the proposed program manager holds such certification, evidence of the certification should be included in the proposal.
- The program manager should have at least three years' experience managing large-scale assessment projects from conception through completion, following industry-recognized

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project-management methodology. Previous experience in projects involving large-scale assessment including high school equivalency, or elementary-, intermediate-, and/or secondary-level testing is expected.

- The proposal should demonstrate the program manager's strong organizational and managerial skills and knowledge of testing procedures.
- The bidder should identify in the proposal the following qualified staff:
  - A literary reviewer who is certified by NLS in literary braille proofreading under the rules of UEB (if applicable, an NLS certificate should be included)
  - A mathematics reviewer who is certified by NLS in mathematics braille proofreading under the rules of Nemeth Code for Mathematics and Scientific Notation with at least a general certification in UEB (if applicable, an NLS certificate should be included)

### **4. Appropriate Security Measures**

**(15 points)**

The proposal should describe the bidder's facilities and security procedures including:

- A description of the exact location where transcriptions will take place;
- Storage and retrieval processes;
- Surveillance; and
- Procedures for the secure shipment of documents and transmission of data files

Security must, at a minimum, be consistent with the requirements set forth in the Security Guidelines for the Attachment A: New York State Assessment Program

### **5. Quality of Braille Transcriptions**

**(15 points)**

Proposals should include for NYSED's thorough examination, with Package B—Technical Proposal, braille transcriptions of three regular English print sample test pages found in §6. *Attachments* transcribed:

- for the subjects of Earth Science, Global History and Geography, and Mathematics
- under the rules of EBAE and UEB (a transcription of each)
- accurately
- to reflect NYSED's formatting standards (as indicated in the sample exam pages)
- with quality that meets the specifications of NYSED as rated by a NYSED braille reviewer



**2.4 Cost Proposal (Package C)**

**(30 points)**

The signed original plus two (2) copies of the completed Cost Proposal (Appendix B) must be mailed in a separate envelope labeled **Cost Proposal- RFP #17-014-Do Not Open** and should include the following:

**1. Bid Form Cost Proposal (Appendix B)**

**Signature Required**

**The Financial Criteria that will be evaluated in determining the award and relative points is listed below:**

- |   |                    |
|---|--------------------|
| <b>1. 5-Year Average Price per page of Regular English print transcribed into Braille</b> | <b>(15 points)</b> |
| <b>2. 5-Year Average Price per Braille page reproduced</b>                                | <b>(15 points)</b> |

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### 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 Criteria for Evaluating Bids

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

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

##### 3.1.1 Minimum Technical Score

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

##### 3.1.2 Technical Criteria

**(70 Points)**

Technical Score Evaluation	Points
1. Experience in Successful Braille Transcription	10
2. Appropriateness of Work Plan	15
3. Appropriateness of Proposed Staffing	15
4. Appropriate Security Measures	15
5. Quality of Braille Transcriptions	15
<b>Technical Evaluation Total Points</b>	<b>70</b>

##### 3.1.3 Financial Criteria

**(30 Points)**

- The **financial criteria portion** of the proposal represents 30 percent (30%) of the overall score given to each vendor’s Proposal. This calculation of the score for each vendor’s Cost Proposal will be computed by the Contract Administration Unit upon completion of the technical scoring by the technical review panel.
- The Financial Criteria portion of the RFP will be scored based upon the 5-Year average price per page of regular English print transcribed into Braille (15 points) and the 5-Year average price per Braille page reproduced (15 points) as indicated on the Bid Form Cost Proposal (Appendix B). The cost proposed by the vendor must include all costs for providing all services specified in this RFP, with the exception of shipping materials to NYSED. Actual payment to

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the vendor will be based on the Price per Page for the number of pages actually transcribed and reproduced, as well as actual shipping costs. Not all exams will be transcribed into Braille for each administration. The number of pages per exam and the number of copies requested varies greatly from administration to administration.

- The submitted cost proposal will be awarded points pursuant to a formula that awards the highest score of fifteen (15) points to the proposal that reflects the lowest 5-Year average price per page of regular English print transcribed into Braille and fifteen (15) points to the proposal that reflects the lowest 5-Year average price per Braille page reproduced averaged across all content areas, contract years and type of braille coding used. The remaining cost proposals will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest cost proposals submitted.

Cost Evaluation	Points
1. 5-Year Average Price Per Page of Regular English Print Transcribed	15
2. 5-Year Average Price Per Braille Page Reproduced	15
<b>Cost Evaluation Total Points</b>	<b>30</b>

Costs associated with shipping are not to be included in the prices per page bid by the contractor. These shipping costs will be paid based upon separate invoices submitted by the contractor to NYSED.

- **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. In the event that NYSED executes this right the Contract Administration Unit will recalculate the financial score based upon the final offers received.**

### 3.2 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 financial score is the highest among all the proposals rated. **If NYSED exercises the right to request best and final offers, the contract will 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 matching highest aggregate scores, the contract will be awarded to the vendor in that group of highest aggregate scores with the highest financial score.

### 3.3 NYSED's Reservation of Rights

NYSED reserves the right to:

1. reject any or all proposals received in response to the RFP;
2. withdraw the RFP at any time, at the agency's sole discretion;
3. make an award under the RFP in whole or in part;
4. disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. seek clarifications of proposals;
6. use proposal information obtained through site visits, management interviews, and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
7. prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
9. change any of the scheduled dates;
10. waive any requirements that are not material;
11. negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
12. conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
13. utilize any and all ideas submitted in the proposals received;
14. regard every offer as firm and irrevocable for a period of 180 calendar days from the bid opening;
15. require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation;
16. request best and final offer(s)

### 3.4 Post Selection Procedures

Upon selection, the successful bidder will receive a proposed contract from NYSED. The contents of this RFP, any subsequent correspondence during the proposal evaluation period, and such other stipulations as agreed upon may be made a part of the final contract prepared by NYSED. Successful bidders may be subject to audit and should ensure that adequate controls are in place to document the allowable activities and expenditure of State funds.

### **3.5 Debriefing Procedures**

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

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

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

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

### **3.6 Contract Award Protest Procedures**

Bidders 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

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review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within seven (7) business days of the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.

4. NYSED's CAU may summarily deny a protest that fails to contain specific factual and/or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

### 3.7 NYS Vendor Responsibility

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

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

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

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

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

### 3.8 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, are

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identified below. NYSED employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at [NYSED's Procurement Lobbying Law Policy Guidelines webpage](#).

Designated Contacts for NYSED  
Program Office – **Christine Brady**  
Contract Administration Unit – **Nell Brady**

### 3.9 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](#) is available on OSC's website.

**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](#) is available on OSC's website.

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

### **3.10 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.

1. As used in this section:

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

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

(ii) officers and employees of statewide elected officials;

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

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

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

### **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.

### 3.13 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.***

#### 3.13.1 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.

### 3.13.2 Proof of Disability Benefits Coverage

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

- **Form DB-120.1**—Certificate of Disability Benefits Insurance; or
- **Form DB-155**—Certificate of Disability Benefits Self-Insurance; or
- **CE-200**—Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

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

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

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

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

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

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

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

#### **4. Assurances**

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

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

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

## STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the People of the State of New York, acting through MaryEllen Elia, Commissioner of Education 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

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payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

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

### III. Terminations

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

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

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

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

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

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

### IV. Indemnification

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

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

### V. Property

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

### VI. Safeguards for Services and Confidentiality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) Identification Number(s). Every

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business



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

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

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

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

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

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

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

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

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE**

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

**24. PROCUREMENT LOBBYING.**

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

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

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

**26. IRAN DIVESTMENT ACT.**

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

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

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

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

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

(January 2014)

## APPENDIX A-1

### Payment and Reporting

- A. In the event that Contractor shall receive, from any source whatsoever, sums the payment of which is in consideration for the same costs and services provided to the State, the monetary obligation of the State hereunder shall be reduced by an equivalent amount provided, however, that nothing contained herein shall require such reimbursement where additional similar services are provided and no duplicative payments are received.
- B. 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. 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.

## Order of Precedence

In the event of any discrepancy, disagreement, conflict or ambiguity between the various documents, attachments and appendices comprising this contract, they shall be given preference in the following order to resolve any such discrepancy, disagreement, conflict or ambiguity:

1. Appendix A - Standard Clauses for all State Contracts
2. State of New York Agreement
3. Appendix A-1 - Agency Specific Clauses
4. Appendix X - Sample Modification Agreement Form (where applicable)
5. Appendix A-3 - Minority/Women-owned Business Enterprise Requirements (where applicable)
6. Appendix B - Budget
7. Appendix C - Payment and Reporting Schedule
8. Appendix D - Program Work Plan